HEARINGS

BEFORE THE

U. S. Congress. House

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

HOUSE OF REPRESENTATIVES

ON

H. R. 12767 AND 16977,

TO

AMEND THE INTERSTATE COMMERCE LAW RELATING TO PRIVATE CAR LINES.

SUBCOMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

FRED C. STEVENS, Chairman.

IRVING P. WANGER. WILLIAM H. RYAN.

JAMES S. SHERMAN. WILLIAM C. ADAMSON.

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HEARINGS BEFORE THE SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HAVING UNDER CONSIDERATION HOUSE BILLS RELATING TO PRIVATE CAR LINES.

WASHINGTON, D. C., *February 4, 1905.*

The subcommittee met at 10.30 o'clock a. m., Hon. Fred. C. Stevens in the chair.

Mr. STEVENS. Do you wish for a hearing this morning, Mr. Ferguson?

Mr. FERGUSON. Do you want me to begin?

Mr. STEVENS. Yes; if you please.

STATEMENT OF MR. E. M. FERGUSON.

Mr. FERGUSON. Mr. Chairman and gentlemen, I am the president of the Western Fruit Jobbers' Association, the National Retail Grocers' Association, the Minnesota Jobbers' Association, the Wisconsin Retail and General Merchandise Association, the Wisconsin Master Butchers' Association, the Duluth Retail Grocers' Association, the Superior Retail Grocers' Association, Superior, Wis., the Lake Superior Butchers' Association, Duluth, Minn., the Duluth Commercial Club, the Duluth Produce and Fruit Exchange, and the Iowa Fruit Jobbers' Association.

Mr. STEVENS. You have appeared before the Senate Committee on Interstate Commerce and testified on this same subject, have you?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. How long have you been acquainted with the fruit business?

Mr. FERGUSON. I engaged in it in the year 1896.

Mr. STEVENS. At what point?

Mr. FERGUSON. At Duluth, Minn.

Mr. STEVENS. Now, will you tell the subcommittee the experience that you have had in shipping in private cars, with especial reference to the practices and exactions which you claim are illegal and extortionate?

Mr. FERGUSON. Mr. Chairman, if it is your pleasure that I take that course in the discussion, I will use the statement that I have prepared.

Mr. STEVENS. Can you not leave that with the stenographer?

Mr. SHERMAN. Is that the statement that you used before the Senate committee?

Mr. FERGUSON. No, sir; it is not.

Mr. SHERMAN. I thought that if it had been printed over there there would be no necessity for reprinting it here.

Mr. FERGUSON. This is an outline of some of the contentions of the private car lines, and I also give you my own reasons why their contentions are incorrect, and refer in a general way to the practices.

Mr. ADAMSON. Do you prefer to confine yourself to that manner of statement, or would you prefer to give that to the stenographer and just talk over these things with us?

Mr. FERGUSON. The only preference that I may have in continuing along this line is that in my own opinion it suggests questions that would not get before us if we proceeded in the informal, catch-as-catch-can way. I will go through this rather hurriedly, and I then may be examined from the basis of the statement.

Mr. ADAMSON. On cross-examination, as it were?

Mr. FERGUSON. Yes, sir.

Carriers maintain that the perishable nature of the goods warrants high transportation charges. Yet the percentage of loss and damage claims paid is much less than 1 per cent. According to Traffic Manager Patriarch, of the Pere Marquette Railway, in his testimony before the Interstate Commerce Commission, it is practically nothing. He admits he can not recall any.

Car lines maintain they render a superior class of service, a more expensive service, and they also superintend loading, etc. As to this, Traffic Manager Patriarch testifies that the car-line service is in no way superior to the Pere Marquette service, and all shippers testify that there is no supervision exercised by the car line companies in any respect.

Car lines claim to scientifically ice cars en route. Yet Michigan contracts extend only to the terminals of the Michigan roads around Chicago and Milwaukee, and from there west and southwest shipments travel over lines not controlled by car lines. Therefore, the icing is done by the railroad companies, and shipments are under the entire care and supervision of the common, old-fashioned railroad companies that the car lines tell you are incapable of serving the public in this capacity.

Car line companies simply instruct railway station agents at points of origin to write on bills of lading "Ice when necessary," or at certain points, and connecting carriers obey these instructions. As to the cost of the ice the contract provides that the railway companies shall furnish it at $2 per ton, delivered in the bunkers when necessary. Why in bunkers if this icing is done by car line experts?

Mr. STEVENS. What are the facts?

Mr. FERGUSON. As a matter of fact it is generally done by the same companies that furnish the service to the railroad company. They are generally performing the same service for the railroad companies when necessary as they are performing for the car lines.

Mr. STEVENS. Does the icing of a car require expert knowledge or the service of an expert?

Mr. FERGUSON. No, sir. Expert in the sense that the word is used in the case of a section man who may have expert knowledge of how to tamp a tie on a railroad. He may acquire it after doing it once.

Mr. SHERMAN. That is, a first-class common laborer, after being shown a time or two, ought to know how to ice a car?

Mr. FERGUSON. Yes, sir. With respect to expert icing, car lines claim they crack the ice and put in salt, an old practice which is common with all carriers and upon which car lines have no patent.

Is it not strange that large systems like the Chicago, Milwaukee and St. Paul Railway, Great Northern Railway, Northern Pacific Railway, Chicago and Northwestern Railway, Chicago, St. Paul, Minneapolis and Omaha Railway, Chicago, Burlington and Quincy Railway, and others have been able to get along without these self-styled "scientific" ice crackers? These roads have not adopted this fancy service, which is proof that they do not want or need it.

It is claimed that private cars reach to any and every market over any line of road and therefore broaden markets and increase competi tion in buying. This is not true, as I will show; but first I wish to direct attention to the statement of the Armour Car Line representative that they have rescued the grower from the coterie of local buyers by bringing in outside buyers, thereby stimulating buying competition in the interest of the growers. It has been quite generally believed that this was a sort of competition the Amour interests did not believe in, and the sort of competition they have successfully overcome in their, as yet, main line of business, buying at stockyards.

In this benevolent work they were doubtless prompted by the same divine inspiration that caused them to stretch out their strong arm to rescue the cattlemen. They have completed their task in the interest of the cattlemen and now have them by the throat, as well as the public, to whom they sell the finished stockyard products.

Now, as to the truth of the statement with respect to broadening the markets for the Michigan growers, at page 172, official notes, Interstate Commerce Commission, June car-line hearing, Traffic Manager Patriarch testified with reference to the total production and the total interstate shipments from points on the Pere Marquette Railway during the preceding four years. I say page 172 of the official stenographer's notes. If they have since printed that testimony in this form [indicating pamphlet], it may be found on a different page.

Mr. STEVENS. They have not done so.

Mr. FERGUSON. Mr. Patriarch's testimony was to the effect shown in this table.

The table referred to is as follows:

Year.	Total number of cars of fruit shipped.	Interstate, under refrigeration.	
		Cars.	Per cent.
1900	4,360	1,435	32
1901	3,706	1,128	33
1902	6,454	1,937	30
1903	7,825	1,632	21

The years 1900 and 1901 were both prior to the exclusive contract. These shipments were all made under the old system of railroad companies furnishing the cars and performing the icing service.

The year 1902 was the year of the advent of the Armour Car Line Company, on the statement of the Pere Marquette Railroad Company, in which year the contract was only partly in force. There were exceptions at markets like Grand Rapids, because they were unable to get all of the roads entering into Grand Rapids into the contract. In

that year there were 6,454 cars of fruit shipped, and 1,937 of those cars, or 30 per cent of the total, was interstate.

The following year, 1903, there was a total production of 7,825 cars, and total shipments to points beyond their terminals, under refrigeration, amounted to 1,632 cars, or only 21 per cent of the total production shipped to points beyond their terminals under refrigeration.

From this it will be noted that while the maximum production was reached in 1903, the first year that the exclusive contract was in full force, interstate shipment fell off 305 cars as compared with the preceding year, and were reduced from an average of about 32 per cent to 21 per cent of the total production, therefore increasing by a large percentage the amount sold on the local markets to local buyers and shipped to markets located on the carrier's terminal.

Mr. STEVENS. What would be the effect of that as to the price to producers?

Mr. FERGUSON. The effect would be to throw a larger quantity of this fruit on markets like Chicago and Milwaukee—terminal points—and cause lower prices to obtain in those markets, and it is frequently the case—almost commonly the case during the heavy Michigan fruit season—that we can buy Michigan fruit cheaper in the Chicago market than we can in Michigan in the orchards because of the Chicago market being overstocked.

Mr. MANN. That overstocking comes by reason of the fruit that goes by vessel. The bulk of the fruit comes by boat, does it not?

Mr. FERGUSON. A great deal of it.

Mr. MANN. The bulk of it?

Mr. FERGUSON. I am not prepared to state that the larger part of it comes by boat, but a great deal of it comes by boat.

Mr. MANN. There is no doubt about that.

Mr. FERGUSON. But what I want to call your attention to is that it has been claimed that this car-line system has come in there and changed all that, and that it has brought in buyers from all parts of the United States.

Mr. ADAMSON. When the market becomes glutted in that way, and they have more than they can sell at good prices, they take less care of it, and there is less certainty of getting a good article on the part of people who buy it for use?

Mr. FERGUSON. I do not think that I quite understand your thought.

Mr. ADAMSON. Where there is so much fruit on the market, and it gets so cheap, is not there less certainty about a purchaser getting good fruit, from the condition of that market?

Mr. FERGUSON. There is a certainty that there will be more poor fruit on the market to offer and somebody must consume it.

Mr. MANN. Might I ask you whether the fruit that goes on the Pere Marquette road from the radial points to the terminal points is carried in the Armour refrigerating cars or not?

Mr. FERGUSON. Not necessarily. The contracts do not require that.

Mr. MANN. The exclusive contract——

Mr. FERGUSON. The carriers admit it to be their lawful duty to furnish cars for commerce destined to these terminal points, be that interstate or otherwise. That is the position of Michigan roads, I believe.

Mr. MANN. Do the exclusive contracts only relate to the shipments beyond the terminal lines?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Do you claim that the falling off in the percentage was due to any exclusive contract by the Armour company with the Pere Marquette road?

Mr. FERGUSON. Yes, sir; I think so, and it completely answers the contention that has been made and doubtless will be made that this system is in the interest of the growers, because it broadens markets. Now, the figures that I have given here are taken from the testimony of Traffic Manager Patriarch, of the Pere Marquette Railroad Company, he being the highest traffic official on that road. If they are wrong, his testimony is wrong.

Mr. STEVENS. Why do you think that difference should be made on account of the exclusive contract?

Mr. FERGUSON. Because of the excessive carrying charges.

Mr. STEVENS. That is what we want to find out.

Mr. MANN. The actual number of cars, however, did increase?

Mr. FERGUSON. The actual number did the first year, but these contracts were not advertised broadcast to the public. Buyers did not come in there because they knew those contracts obtained. They did not know it until they went in there and got up against the contracts.

Mr. ADAMSON. Before you go further, will you not give us a short outline of the exclusive contract conditions with which you are acquainted?

Mr. FERGUSON. Perhaps I had better read from the contract.

Mr. ADAMSON. I suppose that you could state the salient points more briefly than you could read from the contract.

Mr. FERGUSON. I have a contract here which has the salient points indicated in it.

Mr. STEVENS. Can you not state them? Would not that save time?

Mr. FERGUSON. I will read a few extracts [Reading]:

> The Pere Marquette agrees and obligates itself to use the car line's equipment exclusively in the movement of fruits under refrigeration from points on its leased and operated lines, except the Detroit and Lake Erie Railroad in Canada, during the term of this contract, excepting from Grand Rapids, Mich., and excepting in the case of such shipments of fruit as are destined to points on the line of the Pere Marquette, and to Milwaukee, Wis., and Manitowoc, Wis., for which shippers may request Pere Marquette system refrigerators, and with the further exception that such Pere Marquette system refrigerators as are in suitable condition as the Pere Marquette may elect, shall be used in the handling of said fruits when the same are destined to points beyond the Pere Marquette Railroad; but in that event the car line's regular refrigeration charge, as indicated hereinafter, is to be applied and the shipments iced and handled under the supervision of the car line.

In other words, if a Pere Marquette car is loaded at Grand Rapids, Mich., for instance, consigned to Chicago, if for any reason the shipper should want to reship that car, having sold it to St. Paul or Minneapolis or any other point beyond Chicago, while it may have been transported up to Chicago without this Armour car line charge, if it is reconsigned to points beyond, the Armour car line charge applies from the point of origin to its destination.

Mr. STEVENS. Although it was not used?

Mr. FERGUSON. Although, had that car stopped in Chicago, no charge would have been made.

Mr. ADAMSON. Do you know of any other facilities which were offered or obtainable for the service that this exclusive contract covers?

Mr. FERGUSON. Lots of them.

Mr. ADAMSON. Have you ever consulted any lawyers in regard to whether that is not in violation of the Sherman Act in restraint of trade?

Mr. FERGUSON. Yes, sir; I think it is.

Mr. ADAMSON. It would be a good case to prosecute them on under the present legislation, it seems to me.

Mr. FERGUSON. I think so.

Mr. MANN. The Interstate Commerce Commission held that legal?

Mr. FERGUSON. I think not. They have not yet concluded their findings in the case.

Mr. MANN. I read in the press or in one of their reports——

Mr. STEVENS. Here is the last statement on the subject, and I will read it so as to make it a matter of record:

This record calls, therefore, for no discussion of that subject, and the matter is referred to here merely to make plain that no opinion has been expressed upon that phase of the private-car question which may come to be one of vital importance.

Mr. FERGUSON. Here is another extract from this contract.

In case consignees refuse to pay refrigerating charges, and agent at destination is unable to collect the same, the railroad shall be reimbursed for the amounts advanced to the car line. The Pere Marquette shall pay the car line three-quarters (¾) of one cent per mile run by each car of the car line used in said refrigeration service, both loaded and empty, except on such cars as may be left over at the end of the season in shipping districts, and hauled empty to connections as provided for in the last sentence of this paragraph, while in service upon the lines of the Pere Marquette, and furnish free transportation over its lines for the use of representatives of the car line engaged in looking after the fruit movement referred to.

That is very useful when the same companies happen to be merchants in the same commodities. I will not say in every instance, but as a general statement. [Reading:]

Including permits to ride on freight trains, on the condition, however, that the car line shall (and it hereby agrees to) indemnify, protect, and save the railroad company from any loss, damage, or expense on account of any claim against the railroad growing out of any injury sustained or claimed to have been sustained, either in person or property, by any employee or agent of the car line receiving such free transportation over the lines of the railroad under the provision of this contract, whether or not such injury is due to the negligence of the Pere Marquette or its employees. And the Pere Marquette also agrees to instruct its agents to obtain by wire from the officers of the Pere Marquette such information as may be requested by the car line's representatives.

That is broad enough to get any information that they may require or desire concerning my shipments or anybody else's shipments traveling over the common highways.

Mr. STEVENS. What is the effect of that?

Mr. FERGUSON. The effect is that where the same companies are engaged in the same line of business, that knowledge alone, with ample capital, is sufficient to enable the favored firm to crush out competing dealers.

Mr. STEVENS. Have they ever attempted to avail themselves of that information?

Mr. FERGUSON. That would be a very difficult thing to ascertain—a very difficult question to ascertain.

Mr. STEVENS. Is there any charge made that they do?

Mr. FERGUSON. I have heard it charged to be true in eastern markets; yes, sir.

Mr. MANN. Does the Armour Car Line Company purchase peaches?

Mr. FERGUSON. Not to my knowledge.

Mr. MANN. You are reading about a contract that relates practically solely to peaches.

Mr. FERGUSON. But this same contract is admitted to be in existence on the larger portion of the fruit roads in the country, and they have handled oranges and lemons and pineapples and other commodities pretty generally that are handled by the wholesale fruit men of this country, and because they have not handled a car-load of peaches is no assurance that that will not be the next step.

Mr. STEVENS. Do they handle vegetables—have they handled vegetables?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Where, in the Pere Marquette region?

Mr. FERGUSON. I do not know of any to our market coming from there.

Mr. ESCH. Does that cover the celery shipments from southern Michigan?

Mr. FERGUSON. Those shipments do not move in carload lots to my knowledge. They move usually by express. I will read further from this contract:

> The Pere Marquette agrees to sell the car line such quantity of ice at Shelby, Ionia, Ludington, and Saginaw as the Pere Marquette can reasonable spare from time to time, if required by the car line, on basis of not to exceed $2 per ton in bunkers of cars.

You will observe that the railroad company sells the ice in the bunkers of the cars. When it is in the bunkers of the cars all the service is performed as to the scientific icing.

Mr. STEVENS. How long under ordinary conditions would that ice last? I appreciate that it depends on climate and season and so forth somewhat, but how long would it reasonably be expected to last?

Mr. FERGUSON. I would not know how to answer your question with respect to how long it would last, but may better answer it by saying that we were able to obtain this service prior to the exclusive contract, under the railroad system of handling the business, at a charge varying from $5 to $15 a car, according to the weather and to the constant movement of the car.

Mr. STEVENS. What was it afterwards?

Mr. FERGUSON. Forty-five dollars.

Mr. STEVENS. A uniform price?

Mr. FERGUSON. A uniform price.

Mr. STEVENS. For the same kind of service?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Was the service, before the exclusive contract, satisfactory?

Mr. FERGUSON. As good in every respect.

Mr. STEVENS. You were getting fruit through in as good condition?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Did you get the facilities that you wanted?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. The cars arrived?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Were the facilities changed in any way afterwards—after the exclusive contract was made?

Mr. FERGUSON. In some respects; yes, sir. After the exclusive contracts were made the facilities were almost entirely the Armour cars. I believe in some instances when Armour cars were not avail-

able for some markets other cars were used, but then the Armour charge obtained just the same. Prior to the contracts we frequently received our shipments in an Armour car, but the Armour price was not demanded. The regular railroad charge was all that was asked.

Mr. RYAN. Does it make any difference about the distance? Is the $45 charge for any distance the car travels?

Mr. FERGUSON. No, sir; there are different charges to different markets. I will reach that a little bit later. In some instances the refrigerator charges exceed by quite a little the railroad charge itself.

Mr. SHERMAN. The stipulation of that contract is for the payment of $2 a ton for ice. Is that a reasonable charge for the icing?

Mr. FERGUSON. The maximum price is $2 a ton. That would indicate that the railroad companies felt perfectly safe in engaging to do that work on that basis, and no doubt would make a profit on it. I think it has been disclosed at some of the car-line hearings that at certain points there were contracts as low as $1.37 a ton. Indeed, until very recently, and although I am not in a position to vouch for the truth of it, yet the source of my information leads me to believe that it is correct, I am told that at Duluth the contract price was 75 cents a ton whenever it was required to ice a car there. The icing is not always done by the Armour Car Line Company. It may be done by local icing companies, with which companies they make contracts the same as railroad companies do.

With respect to providing ice, I would state that it is done in most instances for the car-line people by the same companies or persons that perform these services for the railway companies. Particularly is this true in territory not covered by exclusive contracts. While cars may originate in the exclusive contract territory and pass out of that territory after a few miles travel, the buyer is compelled to pay car-line charges for the services performed by the connecting railway carriers.

As to the statement that ice in certain localities costs $6 to $7 per ton, I will state that I have in my possession expense bills rendered for ice at points in the desert country where ice is doubtless as difficult to obtain as in any other place in the United States at $2.50 per ton delivered in the bunkers.

With respect to the Michigan growers who testified at the June car-line hearing in Chicago that the Armour car-line service had enhanced the value of their land and products, I would say that their conclusions, according to their own testimony, were based upon their statement that they were located at noncompetitive points, and the railway company did not furnish them sufficient cars in which to ship their products, and for that reason an Armour car under any terms and conditions was better than no car at all.

But if this be admitted as a reason for maintaining the private car-line system, it must also be admitted that it is not a carrier's duty to furnish cars, and I do not believe anyone is desirous of releasing the carriers from that duty.

Car-line companies state that they pay out large sums of money on account of loss and damage claims. If this be true, their records are the best evidence. Why not require a detailed statement and ascertain to whom they are paying these claims. It may be interesting to know. Certainly the shippers do not make their loss and damage claims directly to the car line companies. They file them with the

railroad company, and Traffic Manager Patriarch testifies that he could not remember paying any claims on this traffic, nor did he know of any pending adjustment.

It is claimed carriers can not afford to own refrigerator cars. The net earnings of all these fruit-carrying roads will not support such a statement. Further, the mileage of three-fourths cent per mile, according to the Seventeenth Annual Report of the Interstate Commerce Commission, reproduces the car in three years' time. Any solvent carrier may float a loan at 3 or 4 per cent and provide a fund with which to build cars, thereby saving such carrier the difference between the small amount of interest they would pay as compared with the excessive mileage charges they are paying car-line companies.

Further, the excessive freight rate charged and collected on commodities transported under refrigeration over commodities transported in box or ventilated cars is sufficient to soon pay the entire cost of the car.

I maintain that the refrigerator business is the most profitable part of the carrier's business, and they can well afford to own the cars.

Mr. SHERMAN. How much is the average cost of a car?

Mr. FERGUSON. The testimony is that it is about $1,000.

Mr. SHERMAN. And your statement is that very soon the profits would pay for the car. What do you mean by "very soon?"

Mr. FERGUSON. I mean that the commodities transported ordinarily in a refrigerator car are transported at so much higher rates of freight than charged for the commodities transported in a box car that the difference in the earning of the two cars would soon pay the cost of the car.

Mr. SHERMAN. I understand that; but what do you mean by "soon?"

Mr. FERGUSON. I will reach that by illustration, which I have here.

For example, take a comparative rate, California to Duluth, fruit under refrigeration, railroad rate $1.25 per hundredweight, minimum 26,000 pounds. Refrigeration charge in addition to this from $75 to $107.50 per car. Rate on onions and potatoes, which is still higher than on grain and other commodities, 75 cents per hundredweight. Difference, 50 cents per hundredweight, a total difference on 26,000 pounds of $130 per car. This excess revenue would be still further increased with refrigerator charges added, but we will leave refrigerator charges to cover any or all costs of extra or special service that the carrier may claim is given, leaving the net difference not less than $130 per car. Cars should easily make the round trip from California to Duluth or any like distance in thirty days, or make twelve trips per year. But make liberal allowances, and estimate eight trips per year, and you have a total net excess earning of $1,040 per year on each car.

Mr. STEVENS. There are two factors in that that I would like to know about. First, does the car make the round trip loaded both ways?

Mr. FERGUSON. Unless, as I understand it, the car-line companies insist on the prompt return of their car. It must be borne in mind that their mileage is the same whether the car is loaded or empty.

Mr. STEVENS. That is, the car-line companies?

Mr. FERGUSON. Yes, sir. The car-line companies; and when a car load of freight is shipped from California to New York under refrigeration, the same car may not be in demand for a car of refrigerated products back to California, but it may carry almost any other products.

Mr. STEVENS. But so far as the car company is concerned, it get this compensation anyway?

Mr. FERGUSON. But if a car was delayed to be loaded with other products, it would reduce the average earnings of the car-line companies. Hence it is claimed cars generally return empty by fast trains.

Mr. STEVENS. Your computation was also based on the supposition that the car would be used all the time?

Mr. FERGUSON. I think not. Their schedule time from California to Duluth is nine days. I have based my proposition on only eight trips per year, but if you wish you may still reduce that.

Mr. SHERMAN. Your calculation is upon the basis of this car being loaded in both directions, both from California and back, is it not?

Mr. FERGUSON. No, sir; in only one direction.

Mr. SHERMAN. Your figures are on the basis of its being loaded one way only?

Mr. FERGUSON. One way only.

Mr. SHERMAN. Yes.

Mr. FERGUSON. One way only.

From Chicago to Duluth the rate on fruit under refrigeration is 44 cents per hundredweight. On vegetables (not green) shipped in ventilated or box cars it is 22 cents per hundredweight, refrigeration extra. Excess railroad rate on fruit over vegetables 100 per cent or 22 cents per hundredweight, based on 24,000 pounds, would yield excess earnings on a car of fruit of $52.80 as against a car of vegetables. A car will make the round trip, Chicago to Duluth, each week, the running schedule each way being thirty-six hours. But allow liberally, if you will, for delays and all sorts of things that the car lines will tell you about, and allow that a car makes the trip in two weeks time, making 26 trips per year, the excess revenue is easily calculated, and amounts to $1,362.80 per year.

In the interest of brevity, I will make only these two comparisons. They are fair examples, and sufficient, in my judgment, to direct attention to the proper channels for investigation, believing that all that is necessary to establish our case is that the facts be known.

Grain rates, Duluth to Chicago, are still much lower than the vegetable rates. Therefore, in view of the onerous burden that the fruit shipments are bearing, I submit that fruit has paid well the price of commercial freedom and should be freed from this system that is throttling the industry.

It is erroneously claimed that it is no part of a carrier's duty to furnish refrigerator cars or refrigeration. If that should be the case, by what right of law do they assume the authority to farm out that duty under exclusive contract to some favored car-line shipper, thereby preventing an independent shipper from providing himself with refrigerator cars on such better terms as may be obtained, and by these contracts bringing the independent dealer under the complete domination of his powerful merchant car-line competitor?

If it is not the carrier's duty to furnish this service, it is clearly not their lawful right to provide for it by exclusive contract.

These same carriers have engaged in the perishable traffic, and the traffic has now become enormous. Vast industry is dependent upon the use of the refrigerator car, which car has become as much a necessary instrumentality of carriage as any other car. It is therefore the carriers' common-law duty to furnish it.

The general freight agent of the Michigan Central Railway testified before the Interstate Commerce Commission (June car-line hearing) that his company was operating under an Armour exclusive contract. Yet, prior to that hearing, the traffic manager of the Michigan Central Railway Company wrote to the Hon. J. D. Yeomans, Commissioner, as follows:

> Replying to your communication of the 14th instant, in the matter of informal complaint from the Knudsen-Ferguson Fruit Company, of Duluth, Minn. I find that the car rental of $45 per car (which I understand included refrigeration as well) ——

I wonder if he didn't know it.

Mr. STEVENS. It did not do it?

Mr. FERGUSON. Yes, sir; it did. But he knew all about it and did not have to inquire. [Reading:]

> I find that the car rental of $45 per car (which I understand included refrigeration as well) on the two cars named was charged as stated; not by this company, however, but by the Armour Refrigerator Car Line, who arranged with the shipper for the use of the cars.
>
> The amount charged, I believe, is in accordance with the schedule published and filed by the Armour Car Line.
>
> B. B. MITCHELL, *Traffic Manager.*

We were the purchasers of these goods f. o. b. Michigan. We entered into no arrangements for the Armour Car Line or any body else to furnish these cars, neither did we authorize anybody else to represent us in that capacity, neither did we know that any negotiations of any sort had even been talked of or submitted to the association loading and shipping these goods for us. There is a half tanking arrangement that some of them have signed under methods that may be termed coercive that I have referred to in my testimony before the Senate committee, so I think it will be unnecessary to go into the details of that contract here.

Yet at the same time the Michigan Central was operating under an Armour exclusive contract, and the shipper had no option in the matter, and Mr. Mitchell knew it.

Traffic Manager Patriarch testified (same hearing) that his company could not safely undertake to handle the fruit business originating at points on their line and consigned to points beyond their terminals with less than 2,500 to 3,000 refrigerator cars, all available at the opening of the season. Yet later it is shown by his own testimony that the previous year only 1,632 cars were moved under refrigeration to points beyond Pere Marquette terminals. The wildest sort of an estimate could not have made him sincerely believe that he wanted 2,500 or 3,000 cars in order to transport 1,632 carloads, that being the total number of carloads transported during the entire season under refrigeration.

In 1901, in which year shipments to points beyond their terminals reached the maximum, only 1,937 cars were shipped. Allowing that cars will consume an average of thirty days in making the round trip to Atlantic coast points, and to nearby points a trip a week, the average time consumed by a car in making the round trip may be fairly estimated at two weeks. Now, allow that 1,000 of these 1,632 cars were shipped in six weeks' time, it could be safely figured that every available car would average two trips during the six weeks. On this extravagantly liberal basis 500 refrigerator cars would meet all require-

ments, and of this number it may be safely concluded that one-half or more would be gladly furnished by connecting lines that are anxious not only to get the haul, but also to keep their surplus cars in use, earning mileage.

Mr. STEVENS. Do connecting lines furnish refrigerator cars in any number?

Mr. FERGUSON. Yes, sir.

Mr. SLEVENS. Of your own knowledge?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Could you get a road like the Chicago, Milwaukee and St. Paul to make arrangements to have them use some of their cars in connection with the Michigan Central or any other road?

Mr. FERGUSON. It was not necessary to go to them. The practice has been all through the history of the fruit business that the railroad companies keep advised when these commodities are ready to move, and those that have surplus refrigerator cars authorize their traffic departments to put their cars in that territory.

Mr. STEVENS. That is, the connecting lines like the Chicago, Milwaukee and St. Paul?

Mr. FERGUSON. Yes, sir; and they do concentrate at the terminals of the initial roads their cars in large numbers; first, so that the cars may be earning mileage, and, second, so that they may be able to get some of the business over their own lines.

I know this to be true of my own knowledge of the Chicago, Milwaukee and St. Paul, the Chicago, St. Paul and Omaha, the Wisconsin Central, and Northern Pacific railways, all of which carriers offered refrigerator cars to serve northwestern shippers from Michigan territory, but Michigan roads would not accept these cars. I am also told this is true with respect to many other roads, particularly the Santa Fe Railway, who own and operate a large refrigerator system, but find it impossible to use their cars at most fruit-shipping points because the Armour system is in ahead of them with their exclusive contracts. It may therefore be safely concluded that if the Pere Marquette Railway were required to own 250 additional refrigerator cars, they would be equipped to meet all requirements, and because of the onerous transportation charges this traffic is bearing the Pere Marquette could well afford to provide these cars.

With respect to the demand for refrigerator cars being limited to a few weeks or a few months, as was testified, Traffic Manager Patriarch admitted that about 15,000 cars of potatoes annually were shipped from points on his company's line and that 75 per cent of such shipments demanded a refrigerator car if it were to be had, but that h company would not undertake to furnish them, and the shipper h the privilege of buying lumber and lining box cars, at his own expens to be used for potatoes. Further testimony developed that agen were instructed to say to shippers, "We will get you an Armou refrigerator car if you want to pay us $10." This, of course, witho the use of ice or any of the fancy icing service, and notwithstand that the testimony of one of the car-line representatives was that t did not collect car rental from both shipper and carrier and that mileage of three-quarters of a cent per mile yielded a very satisfac return.

Traffic Manager Patriarch testified that their company's only re

for entering into these contracts was to provide the cars in the cheapest manner possible.

Mr. ADAMSON. That gives that $10 to the car line or the agent of the railroad?

Mr. FERGUSON. I have never been able to trace it. The testimony is that the agents have instructions to say to the shipper, "We will give you a car if you pay us $10."

Mr. ADAMSON. And then in addition to that $10 you have to pay the railroad company and the car line both?

Mr. FERGUSON. Not for potato shipments.

Car-line service in other respects was in no wise superior or different to that which the railway company had previously been giving except that it provided a more adequate supply of cars. That may be verified by going over the testimony of the June car-line hearings.

This was with respect to the refrigerators. That testimony was to the effect that the car-line service was in no way different, or the service rendered by the Armour car-line system was in no respect different, from the service on the Pere Marquette, and differed in no respect except that it furnished a more adequate supply of cars.

Mr. SHERMAN. Would it not be profitable for the fruit growers to own some of those cars?

Mr. FERGUSON. They can not. The railroads would not handle them.

Mr. SHERMAN. Do you mean that the Pere Marquette would not handle those cars belonging to the fruit growers, or——

Mr. FERGUSON. No, sir; never.

Mr. ADAMSON. Not under this contract.

Mr. FERGUSON. Not under this contract.

Mr. ADAMSON. Suppose that we conclude to vitalize the Interstate Commerce Commission by clothing it with power to make orders affecting rates; would it not settle all these matters by making all of these car lines amenable to the interstate-commerce law?

Mr. FERGUSON. I think not, because it would be putting two common carriers upon the highways.

Mr. ADAMSON. If both of them confess that the business can not be done without their cooperation, both ought to be amenable to the law, ought they not?

Mr. FERGUSON. It is not so confessed, as a general proposition. It is asserted to be so by the lines under contract, but other lines do not take that position.

Mr. SHERMAN. You said a moment ago that if the fruit growers secured private cars the railroads would not handle them. You mean because of their exclusive contract with the Armour people?

Mr. FERGUSON. There may also be other reasons. The railroad companies have cars of their own, and they much prefer to keep their own cars in motion. It would be entirely optional with them whether they did or not, and where the exclusive contracts obtain they will not handle any other car, except it be an Armour car, unless that car is handled under the Armour arrangements and for the benefit of the Armour car-line system.

Mr. ADAMSON. My question as to the fruit-growers' association was meant to refer to the railroads which profess that they could not furnish cars.

Mr. FERGUSON. I catch your idea; but I think there is great danger in that, Mr. Congressman, in departing from the past way of doing

business and from the holding of the railroad company responsible for furnishing the instrumentalities of carriage.

Mr. ADAMSON. In the southeastern country, you know, in Georgia and Alabama, the fruit industry is not developed to any large extent and there are not large quantities, and the railroads there claim that they are forced to make these contracts with the Armour company because they can not afford to furnish the cars themselves for the small quantity of fruit moving in six weeks and they can not otherwise secure the cars. What about that?

Mr. FERGUSON. They claim a great many things that are not true, and I think that is one of them.

Mr. ADAMSON. You think that they could get them?

Mr. FERGUSON. They can well afford to own the cars, and I think the cars would produce a good revenue——

Mr. STEVENS. Do you think that the connecting carriers would furnish them?

Mr. FERGUSON (continuing). But if you continue this holding system until it becomes so large that there are but a few outside lines then the outside lines will be entirely at the mercy of the car line companies, and if they did own cars of their own there would be no hope of their owning anything on other lines, because the holding company would always be in ahead of them there.

Mr. ADAMSON. I know that the fruit industry is greatly retarded and discouraged on account of the difficulty of getting transportation.

Mr. FERGUSON. I know that.

Mr. ADAMSON. And there would be thousands and thousands of acres of orchards in my country if there was the transportation.

Mr. FERGUSON. And that situation is being more and more aggravated year after year, because you let the companies take the position that it is not their duty to furnish refrigerator cars, and if we continue along that line it will not be but a few years until they neglect entirely to look after the fruit industry, and it will be absolutely and entirely in the hands of the holding companies.

Mr. MANN. You have referred to the amount of profit that the railroad companies could make out of a car. Take the Georgia peach season, which I presume does not last very long. Could those southern roads afford to build refrigerator cars for that short season, and if they could not for that short season, could they keep those cars occupied in some other way during the balance of the year?

Mr. FERGUSON. In reply to that, Congressman, I would say that I am not a dealer in Georgia peaches to any extent at all.

Mr. MANN. Well, take the Michigan peaches, then?

Mr. FERGUSON (continuing). But I think that it may be safely concluded that if each carrier was required to own a reasonable number of refrigerator cars, sufficient to reasonably protect the commerce originating along their several lines, the interchange of traffic would take care of itself entirely, just the same as it does with respect to box cars or any other instrumentality of carriage, and the Georgia roads or the southern roads would not be required, nor it would not be necessary for them, to own cars equal in number to the carloads of fruit originating on their lines. Connecting lines, knowing when that crop was ready to move, would, the same as they do in the Michigan case or in any other place where free competition exists, send their surplus cars there.

Mr. ADAMSON. The point is, are the fruit refrigerator cars confined o the fruit business, and are they useless for other business, or can ney be used all the year around, a part of the time to haul something lse?

Mr. FERGUSON. They are used all the year around, and I think careul inquiry will fail to locate any of them rusting on the sidetracks. 'hey are used for other business.

Mr. MANN. The fruit business, running on latitudinal lines, starts ow in Florida with strawberries and winds up in Michigan or farther orth. Could the Pere Marquette line conveniently use special cars nat start in Florida at this season of the year? Would there be any rrangement between the railroads by which they would get those cars?

Mr. FERGUSON. The impelling motive would be business for the arrier, just the same as the impelling motive takes care of all other nes of business, and the connecting carriers best located and situated o reach that territory, you may depend upon it, would reach it if all ailroads were required to own their fair quota of refrigerator cars.

Mr. MANN. There is practically no connection between the roads unning from Georgia and Florida along the Atlantic coast line and ne roads from the Michigan peach district running northwest.

Mr. FERGUSON. Then, I would say that it is absolutely necessary for ll common carriers, whether they be in Florida or Georgia or any ther State, to be told that if we give them sovereign rights and ndustry springs up along these highways that is dependent upon the se of any special type of equipment, and they encourage that industry and hold themselves out as carriers of the products of that industry, 're will look to them to protect that industry.

Mr. STEVENS. Would it not cost more?

Mr. FERGUSON. I do not think so. I am going to answer that question a little more in detail for the Senate committee, and I will submit the same answer to this committee later on. But even if it does ost more, is that a sufficient reason why a holding company should be reated and a monopoly should be created for the United States? If 're proceed upon that theory, we may just as well proceed upon the neory that all business should be centralized and put under one mangement.

Mr. STEVENS. That was not my theory. My theory was that that dditional cost might discourage production if the products could not nd a profitable market.

Mr. FERGUSON. Answering further, then, I will say that there have een no limitations with respect to cost of carriage under the present ystem. It has been as high as the moon whenever it has been possile to reach it, and a careful examination of the tariffs will disclose nat distance of service has not been taken into consideration with espect to making the tariffs. You create a monopoly and I will guarntee that monopoly will never operate in the interest of the public; will be in the interest of higher prices.

Mr. STEVENS. Then you maintain that even if it costs more for a ailroad to own and operate one of these cars that the difference in the ost of refrigeration and matters like that would be less, so that the otal cost to the producer and consumer would not be materially nanged; that is your position?

Mr. FERGUSON. I think that if the railroads owned and operated neir cars, even though it might require a few more cars, the cost of

transportation would be much less to-day; much less to the fruit-growers, and they would have less to complain of than they have to-day.

Mr. MANN. You think, as I understand, that the railroad company is obliged to furnish cars wherever a man raises fruit and wishes to ship it?

Mr. FERGUSON. If a railroad company has once engaged in that business.

Mr. MANN. That would also cover shipping by express?

Mr. FERGUSON. Express companies are not common carriers, or rather are not amenable to the act to regulate commerce, as I understand it. I wish they were.

Mr. MANN. I think myself that is right; but if it is the duty of the railroad company to furnish ample accommodations to ship by freight then there would be no occasion for shipping any fruit by express, would there?

Mr. FERGUSON. Not unless it be so desired by reason of quicker time. They make a little quicker time.

Mr. MANN. These fast freight trains practically make express time, do they not?

Mr. FERGUSON. They do not; nowhere near it.

Mr. MANN. Out on the road I used to live on they made faster time than the express trains.

Mr. FERGUSON. That has not been my experience as a dealer.

Therefore according to this testimony it must be conceded that the contract was entirely in the interest of the carrier. Similar testimony was given by other competent witnesses. Yet in the face of this testimony it will be strongly urged upon you gentlemen that the superior "scientific" car-line service is better for the people, and therefore Congress should protect the shipping public by compelling the public to use this service, thereby bringing them under the legal domination of the infamous (though, as they would have you believe, munificent) car-line system.

With respect to the private car-line system being economical for the carrier, I claim their own showing conclusively demonstrates the contrary to be true, and that the excessive mileage they are paying exceeds by considerable the amount that would pay interest on a sufficient principal to own these cars.

Therefore, one should look askance at this contention and direct the mind to inquiring as to the probability of community of interest being the impelling motive. But all of these contentions, to my mind, are absolutely immaterial. If in the interests of the carriers' convenience you are ready to admit of car-line practices such as disclosed, it must be upon the theory that it is fair to release the carriers from their obligations to the public whenever it is in the carriers' interest to do so. The practice will rapidly spread, and upon the same theory they will soon be seeking a release from their obligation to the public of furnishing box cars or any other instrumentality of carriage; and I doubt that if the privilege be granted with respect to one style of equipment that its application could be denied to any other style of equipment.

If it be economy to the carrier, the public certainly derives no benefit, because instantly upon the execution of these exclusive contracts refrigerator charges are increased from 300 to 500 per cent.

Further, with respect to the total number of cars required for all
es, the Armour car line's representative testified before the Interstate
mmerce Commission (June hearing) that their company operated
)00 refrigerator cars in the fruit business. They serve with these
:s not only the Pere Marquette Railway Company, whose traffic
nager testified his company would need 2,500 to 3,000 cars at the
ening of the season, but the Michigan Central, the Grand Rapids
d Indiana Railway, and the Grand Trunk Railway in Michigan, each
which would presumably need a like number. In addition they
re serving the Georgia peach territory and practically all of the
uthern States, besides the great Southern Pacific system, from whose
ritory there is a constant and never-ceasing flow of fruit in refrig-
ator cars; and this is all being done with 8,000 cars. So it can be
n that the extravagant statements of certain carriers with respect to
e large number of cars they would need may be materially pared
wn.

If each road was required to own a sufficient number of cars to rea-
nably protect the commerce originating on their several lines, the
tural interchange of traffic would take care of itself, and though a
r may go off its owner's line it would be all the time earning the
gulation mileage charge of three-fourths of a cent per mile, and there-
re no hardship to the owner.

The private car line practices for a long time were confined to the
lifornia roads, where the demand for refrigerator cars is the rule
e year through and not the exception. Hence none of the arguments
at the system is justified because of the limited demand for refriger-
or cars would obtain in support of the California situation. This
tement is clearly borne out by the action taken by the Santa Fe road
building and equipping their own refrigerator cars.

And so I might go on pointing out the fallacies of all such conten-
ns, but to my mind it is a waste of time and I should not have
dertaken to have done so to any extent had I not reason to believe
at all of these contentions have and will be offered in defense of the
stem.

I wish to say, however, in this connection that the reasons offered
the carriers for entering into these contracts are varied and many.
this respect I call special attention to the situation as it obtains with
e St. Louis and San Francisco (or Frisco) Railway Company. It
ll be observed that this system arbitrarily takes away from the ship-
r the right of routeing, all of which is finally chargeable to the pri-
te car line system. It will also be observed by letters in my file
)m their traffic managers that, in an effort to ascertain whether or
t the use of these private cars would be forced upon us, I was unable
get any definite information, even after a rather spirited corre-
ondence extending over six weeks' time.

First, they maintain that it was necessary for them to control the
uteing of the cars in the interest of the growers. Later they main-
ned routeing in their own hands was necessary in order to enable
em to obtain refrigerator cars from connecting lines, notwithstand-
g that refrigerator cars were provided by the Armour car lines and
at the Frisco would not accept any other cars. And as to my ques-
)n with respect to whether or not they would compel us when mak-
g shipments to use private car line cars they ignored this question
ogether. But after a further pressing request with respect to the

forced use of these cars a disingenuous and unsatisfactory answer was all that I was able to obtain.

As a final result I was able to obtain over the signature of their third vice-president the information that they had entered into a contract with the Armour car lines to furnish cars, but no answer was made as to whether or not they would allow shippers to use any other car. But the rather remarkable disclosure was made that they retained arbitrarily in their own hands the routeing of these shipments over connecting lines (which experience shows is done without respect to the service rendered) that they may discharge their obligations to connecting lines that haul or assist in concentrating the Armour cars at Frisco terminals.

Mr. STEVENS. Right there, does that make any difference with the service that is received by the shippers?

Mr. FERGUSON. It makes a large difference, and what I wish to particularly direct your attention to is that there is a further burden that the shipper must bear, because, as stated by the third vice-president of the road, of the necessity of paying the connecting lines that haul the empty Armour cars to their terminals. So that whenever these practices obtain there are all sorts of discriminations and manipulations immediately put into effect.

It will be necessary only to direct your attention to the secret routing agreement, in my possession and now offered for inspection, to point out the fallacy of all these statements, as it will be noted that traffic is divided up in a manner such as to disclose the fact that no thought of the service could have entered into the arrangement, and, further, that the agreement is dated April 23, 1903, which was prior to the beginning of the strawberry movement on the Frisco system, and therefore at that time the Frisco Railway could not have known what roads would perform the service of concentrating at Kansas City or St. Louis the Armour cars, as these cars would be picked up all over the country by the various different roads.

This secret arrangement is clearly in the interest of the carriers and the car lines, and in their interest only. These and similar engagements, also this constant double dealing with the public will be found wherever these private car-line companies operate. The convenient channel is provided by permitting the two to work together upon the common highways, and you can not stop or prevent similar practices by extending the jurisdiction of the Interstate Commerce Commission to these car-line companies and attempting to make common carriers out of them.

Such a proposition would for the immediate future give the car-line companies a legal standing and provide a convenient channel for manipulation, and place a screen between the shipper and the vicious secret agreement, from which he would have no protection, and the Interstate Commerce Commission would have to be provided with a sanction to inquire into the railway companies' affairs to the same extent that a national bank examiner inquires into the affairs of a banking business, and charged with the duty of keeping a corps of expert accountants constantly examining these channels in order to protect the public against such vicious arrangements, and, further, the Commission held responsible to the public for such protection.

On the contrary, the Commission's duty would be that only of hearing complaints from any shipper or shippers who, perchance, after

years of fierce struggle, may discover that he or they are being commercially murdered by these vicious discriminations as well as the expense of the litigation.

On pages 64 and 104, Official Notes, June car-line hearing, will be found Traffic Manager Patriarch's testimony that certain points on their line were excepted from the operations of these exclusive contracts during the year 1902, particularly Grand Rapids, Mich., because, as stated, the Grand Rapids and Indiana and Grand Trunk railways were not parties to the secret compact, and for the Pere Marquette or Michigan Central roads to force the use of the Armour cars upon the shippers at this point would result in throwing all of the business to the outside lines.

In view of the testimony as indicated above, is it not clear that the iniquitous private car line system can not obtain under full and open competition, and that there is no merit to the system and no merit to the car line's contention with respect to superior service, and that the public is better served under this system than otherwise? The Grand Rapids situation clearly demonstrates that the public use the system only when compelled to do so.

In the following year, 1903, the Grand Rapids and Indiana and Grand Trunk were won over and taken into the secret compact. Then and there ended the commercial freedom of the Grand Rapids fruit industry, and all shippers but one at that point are now yielding up tribute to the system. One shipper there, who happened to own 30 refrigerator cars that he had operated for years on the mileage basis alone, was at first denied the privilege of using his own cars in making shipments; but in order that this shipper might not become troublesome, as his protests indicated he might, this shipper was privileged to use his own cars in making shipments to his customers on one condition only, to wit: That he become a party to the secret compact and agree to charge his customers the Armour rate, which the railway companies kindly offered to bill as advance charges against all shipments so made, collect from the consignee at the destination, and rebate this shipper the difference between the Armour charges collected and the actual cost of ice, based upon the total amount used at the rate of $2 per ton in the bunkers. And it will be noted in this case that the railway company undertook to do the icing itself, or rather arranged for its being done by the connecting lines over which the shipments might travel.

This arrangement amounted to the granting to this shipper a handsome rebate on each and every car shipped, but be it remembered that this arrangement was not of his own seeking, but on the contrary, he was compelled to subscribe to this trust agreement in order that there might be no competition for the car line at this point. Be it further remembered that this is the same car-line company that would have you believe that they were engaged in the munificient work of bringing in buyers from all parts of the country to buy the Michigan products, to the end that competition in buying might be stimulated in the growers' interest.

In view of all of this willful and manifest misrepresentation, it would seem that any and every statement made in defense of this system should be given but little consideration at the hands of fair-minded men.

I have here the report of cases at Chicago which I would like to refer to.

Mr. MANN. What do you read from?

Mr. FERGUSON. The Packer, a trade paper of Kansas City. This article was written by the chairman of the car-line committee of the National League of Commission Merchants. So it is authority.

These are the Ellis and Coyne Brothers' cases.

The Messrs. Ellis had received a car of tomatoes from Gibson, Tenn., upon which the freight charge was $111.67 and the icing charge $73.92. The Messrs. Ellis were instructed by your committee to refuse to pay the icing charge. This refusal resulted in the railroad accepting the freight charge and subsequently suing before a justice for the icing charge.

This suit was lost by the Messrs. Ellis in the justice's court and an appeal at once taken to the superior court. In the meantime your committee appointed a local finance committee, composed of Messrs. William Wagner, John W. Low, and Richard Coyne. This finance committee raised $405. It is proper to state that the whole of this amount was subscribed by Chicago League members with the exception of $20. A part of the fund raised was used in retaining counsel and defending and appealing the Ellis case and providing for its prosecution in the superior court.

The Messrs. Coyne Brothers had a similar case of excessive icing charges, this on a car of melons from Indiana. The freight charge in this instance was $39.15, the icing charge, $45. Messrs. Coyne Brothers were likewise instructed to refuse to pay the icing charge. As in the Ellis case the railway accepted the freight charge, but in this instance instead of the railway the Armour car lines instituted suit for the icing charge. The cost of this suit was likewise taken care of by the local finance committee. Your committee thus has two suits under way, one where the railway is suing for the icing, which service was supposed to be performed by the Armour car lines, the other where the Armour car lines are themselves suing for the icing service, which they were supposed to have performed; and yet in both these instances the icing service, while supposedly performed by the Armour car lines was in reality performed by the railways, and in neither instance did the icing service performed by the railways cost more than $15 per car, while the shipper was charged in one instance $45, in the other $73.92.

A discussion of the intricacies and deviousness of railway and Armour car lines icing methods under the exclusive Armour contracts would be too tedious to enter upon at this time. Suffice that in nearly all instances the railway does the icing, the Armours do the charging, the railways do the collecting, and the producer at one end and the consumer at the other end pay the bill.

A sample of Armour extortion. Again, referring to the Ellis car of tomatoes that we may still more fully understand the effect of the Armour exclusive contracts, we have to know that the distance from Gibson, Tenn., to Chicago is 522 miles, and from this point the Armours charged the Messrs. Ellis $73.92 for icing, while the icing charge by the Illinois Central Railroad from New Orleans to Chicago, a distance of 923 miles, is only $30 per car, so that in this instance the Armour exclusive contract enabled the Armour lines to charge $43.92 more for refrigeration for a distance of 522 miles than the Illinois Central, upon whose lines there are no exclusive contracts, charges for a distance of 923 miles.

But if this statement shows an intolerable state of affairs, what shall we think when we are made aware that upon the selfsame day in which the Messrs. Ellis received this car of tomatoes from Gibson, upon which they paid the $73.92 icing charge, they received a like car of tomatoes from Memphis, which is a few miles farther from Chicago than Gibson, and upon this Memphis car the icing cost was only $15; and to make matters worse the car used from Memphis, upon which the icing cost was $15, was an Armour car, but hauled over a road where no exclusive Armour contract exists. Think of it for a moment. Under the Armour exclusive contract, from Gibson, Tenn., 522 miles, $73.92; from Memphis, Tenn., 527 miles, practically the same distance, under free refrigerative competition, $15.

Mr. RYAN. Has any of those suits for the collection of any of the icing charges been finally decided?

Mr. FERGUSON. No, sir; I have one in process myself in the Federal court at Duluth, but no doubt it will be some time before it will be determined.

Mr. SHERMAN. I want to preface this question I am about to ask with the statement that I am thoroughly in sympathy with this effort to remedy whatever evil exists in these private car lines, and I am grateful to anybody that will bring us any information that will help us in the solution of that question.

I have been told, Mr. Ferguson, that you are not the accredited representative of some of these associations which you catalogued at the opening. I was going to ask you if you had credentials showing you to be their representatives?

Mr. FERGUSON. Yes, sir; from every one of them, and I will file them.

Mr. RYAN. Does your objection apply entirely to the class of cars known as refrigerator cars?

Mr. FERGUSON. As they relate to my particular business; but I think the system is dangerous to all business.

Mr. RYAN. The principal thing you object to in the refrigerating cars, as I understand it, is the excessive cost of icing?

Mr. FERGUSON. No, sir; that is a secondary consideration. I as an independent merchant am compelled when I use the highways in the shipment of goods, as I am compelled to use them, to give my competitors a full knowledge of my business, and I must entrust to them the care and shipment of my goods, and I am not willing to do it.

Mr. RYAN. They are frequently your competitors, then?

Mr. FERGUSON. Yes, sir.

Mr. ADAMSON. Do those same conditions in the contract obtain as to the private cattle cars?

Mr. FERGUSON. I suspect they do, largely, although I have not inquired into the conditions that obtain there. But it is pretty largely that way, I should think.

Mr. ADAMSON. Do you know who is responsible or does anything toward the care and feeding and watering of cattle in those cars; does the railroad company do that or the private car company?

Mr. FERGUSON. The Supreme Court, I believe, has held that the railroad company is responsible for it.

Mr. ADAMSON. Yes, but does the private car company ever do it?

Mr. FERGUSON. I am not advised as to that, having had no experience in that direction.

Mr. ADAMSON. You do not represent that association?

Mr. FERGUSON. No, sir.

Mr. STEVENS. Mr. Ferguson, in what way does the bill come for refrigeration service to you as the shipper, as the consignee?

Mr. FERGUSON. The common way of presenting the bill is simply to include it in the total amount, the expense bill as presented by the railroad agent, without its being itemized, unless a demand is made for it to be itemized.

Mr. MANN. Is that filed in the schedule of tariffs?

Mr. FERGUSON. It is not; no, sir.

Mr. MANN. Does the law require it——

Mr. FERGUSON. They say not, upon this theory; that it is not a transportation matter at all, that it is a local service charge. We do not agree with them.

Mr. MANN. But as a matter of fact, do the railroads that carry their cars file as a part of the tariff schedule the cost of refrigeration?

Mr. FERGUSON. No, sir; not as a rule, and if they do the charge is never designated. They may refer to it, that it does not include refrigeration, but the charge is never definitely fixed.

Mr. STEVENS. Just one question, Mr. Ferguson. Have you seen any schedules of Armour's charges. Are they filed or located or placed anywhere?

Mr. FERGUSON. I have seen schedules of Armour charges but they are not commonly obtainable.

Mr. STEVENS. Are they posted as other regular schedules are?

Mr. FERGUSON. Not in our territory. And further than that, I have been unable to get them or get any information concerning them after diligent inquiry from railroad commercial agents at our point, and they have sometimes consumed an entire week endeavoring to find out for me what these charges would be, from one point to another, and then have failed.

Mr. STEVENS. Does it make any difference to you as a shipper whether you receive your cars routed as requested by you or as routed by the originating carrier under the exclusive car-line contract?

Mr. FERGUSON. It makes a great difference.

Mr. STEVENS. In what way?

Mr. FERGUSON. In the first place, if the routing be left entirely with the initial carrier it is in all effect the same as pooling the quality of service. They disregard it, the connecting carriers or the connecting lines will not look to the consignee or the owner in this business, but will look entirely to the initial line and will dicker with the initial line for the business; and the owner of the car may protest against the service and they may listen to his protest, but they will not heed it, knowing full well as they do that the owner has no power to divert the business away from them.

Again, roads do not furnish the same quality of service. For instance, I have a car originating from the southwest coming through Kansas City or St. Louis. There are many diverging roads from those points that may carry that consignment to Duluth for me, and they give many grades of service. Our business (dealers in perishable commodities) is such that it makes it important for us to know what progress our shipments are making toward market, and just what time they will arrive, and where they are. Some roads undertake to give us this information. The moment they get a car turned over to them at their terminals they immediately notify us by wire that they have received this car from such a line, the connecting line, giving the car number and condition of contents, and they will follow it along the line and if there is a delay they will advise us, therefore enabling us to make our arrangements in advance of the arrival of the goods for the sale of them. Being, as I say, of a perishable nature it is highly important, as anyone that has had anything to do with perishable traffic will recognize, and indeed it is absolutely essential to the successful carrying on of the fruit business, that we should have this information.

Mr. ADAMSON. You say that at the same time they give you that advantage they are overly kind and give your competitor, Armour & Co., the same information about your car?

Mr. FERGUSON. Yes, sir; the Armour car lines are permitted to have that information, and as long as they are permitted to operate

cars you could not prevent them from having it, because they keep track of their own cars, and the practice is now when a waybill is made out at the point of origin it is made in duplicate and a carbon copy is given to the Armour car lines.

Mr. RYAN. You have mentioned the Armour Car Line several times. Do the Armour car lines ship fruit?

Mr. FERGUSON. Yes, sir.

Mr. RYAN. Their competitors are commission men in that line?

Mr. FERGUSON. Yes, sir.

Mr. RYAN. Are there any large private car lines of refrigerating cars besides Armour?

Mr. FERGUSON. There is the Gould system, known as the A. R. T.; there is the Santa Fe Refrigerating Transportation Company, owned by the Santa Fe Railroad; and there is the Merchants' Dispatch Transportation Company, which I think owns about 4,000 cars.

Mr. RYAN. And they have exclusive contracts over roads?

Mr. FERGUSON. I think not. They put their cars into any territory for mileage earnings, and they are operated the same as carriers' equipment in every respect.

Mr. RYAN. The Armour Company, then, is the only company you know of that has those exclusive contracts?

Mr. FERGUSON. I do not know that the A. R. T. has exclusive contracts, but inasmuch as the car line is owned by the carriers themselves they operate almost entirely upon those lines. The same is true of the Santa Fe. I wish to state, however, before closing that Congressman Stevens asked me to say something with respect to my ideas of a holding company and what it may result in. I had arranged to do that, but the time is fully taken up.

Mr. SHERMAN. If you have prepared some special information we would like to have it.

Mr. ADAMSON. We might have a session in the afternoon.

(Informal discussion followed, and thereupon at 12.05 p. m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The subcommittee met at 2 o'clock p. m., pursuant to the taking of recess.

STATEMENT OF MR. E. M. FERGUSON.

Mr. FERGUSON. Mr. Chairman and Congressmen, it is not my intention to worry you with a long, irrelevant argument, but Mr. Stevens suggested to me last night that he would like to have my views with respect to the holding company system, and also as to the advisability of legislation designed to totally eliminate the private cars. I recognize fully that legal questions are involved no matter which course this legislation may take, and my views in that respect are not of much importance, being only the views of a layman. But a few practical thoughts suggest themselves to me, and I deem it not unwise to place this committee in possession of such thoughts.

If you continue the private car-line system in any form you can not prevent the Armour interests from obtaining such information as they may desire with respect to their competitors' business, and I do not

believe Congress can constitutionally make a law that would give the car-line trusts such advantages over all their competitors. The highways by inherent right belong to all alike, and any law that would admit of one class of citizens enjoying special privileges on our highways would not stand a test of the courts.

Again, to continue the private car-line companies for the purpose of supplying refrigerator cars will unquestionably result in the stronger company eventually controlling all refrigerator cars. Such monopoly may be obtained by the Armour car-line company or by a holding company controlled by several of the large railroads, for instance. The power concentrated in such company it may be well to consider for a moment. First, if owned by a holding company controlled by several of the carriers, only such carriers as were parties to that holding company could safely rely upon being properly served with refrigerator cars, and even the carriers parties to the holding company may be insufficiently supplied at times, providing the holding company did not build, own, and keep on hand a number of refrigerator cars equal to any demand that may exist, and economy being the order of the day and the theory upon which the holding company is permitted to exist, it is fair to presume they would endeavor to operate with as few cars as possible, and would not build in excess of that number which in their judgment may be constantly employed, making no pretense of taking care of the maximum demand. The shipper, whose all may be represented in one or many cars of perishable products, may find it impossible to get a refrigerator car in which to transport his products to market, and the little sum so much depended upon by such grower or shipper from the sale of such products for sustenance of family is to him thereby forever lost.

In such cases you will labor in vain to fix the responsibility under the double common-carrier system. Again, roads not parties to the holding company must of necessity be dictated to by the holding company and accept whatever terms imposed if they desire to be supplied with cars by the holding company. Or the alternative—build and own its own refrigerating cars, in which latter case it would be operating to a great disadvantage, because its refrigerating cars would not be used for interchange of traffic on the lines parties to the holding company. Thus all outside roads or new roads that may be built in the future must either accept the arbitrary terms and conditions of the holding company or own their own refrigerating cars, which would stand a good show of remaining idle when not in use on the owner's line, because they would not be used by such lines as were parties to the holding company.

Or, again, these outside companies may be willing to take chances and depend on the holding company, and if the holding company fails to sufficiently supply such dependent carriers the only loss to such carriers would be the earnings on a few cars of perishable commodities they might have hauled if they had had refrigerator cars in which to transport, a loss which would be of small consequence to the carriers. But how about the owners who may have lost their all in a few cars of commodities that they were unable to ship because of the lack of refrigerator cars in which to ship? You may answer that they may hold the railroad responsible. They certainly could not hold the holding company responsible.

Mr. STEVENS. Now, is that true? Do not the private car companies now hold themselves responsible, make a sort of insurance against loss or damage on account of lack of refrigeration or insufficient service?

Mr. FERGUSON. No, sir; they do not, and I do not think there is any law that would hold the car company responsible for lack of sufficient number of cars or proper service. You deal entirely with the carrier. The same remedy exists now as would exist then, if you say you may hold the railroad responsible. I think the railroad companies are responsible for a proper supply of cars now.

Mr. SHERMAN. You do not know the private car company, you as a shipper?

Mr. FERGUSON. No, sir.

Mr. SHERMAN. You simply know the railroad company?

Mr. FERGUSON. I simply know the railroad company.

Mr. SHERMAN. So far as the question of damage is concerned, that is no injury to you, then, because your contract is with a responsible company, is it not? If your shipment is injured or lost you hold the railroad company responsible?

Mr. FERGUSON. Yes, sir.

Mr. SHERMAN. They are answerable in damages to you?

Mr. FERGUSON. Yes, sir.

Mr. SHERMAN. Then that of itself is of no special interest.

Mr. FERGUSON. No, sir. I say the conditions would be the same only if it was attempted to hold the holding company responsible for the furnishing of the cars. In place of having one company to deal with—one company to hold responsible—you would have two, and the difficulty of placing responsibility would be next to impossible and render any law almost inoperative so far as its practical value may be concerned.

Mr. STEVENS. I see your point.

Mr. FERGUSON. Such a remedy is of no practical value and is beyond the reach of the ordinary shipper. I therefore submit that it is neither wise nor just to submit the perishable commerce of this country to such a constant menace. Neither do I believe that the perishable products may be lawfully subjected to transportation laws less favorable to this traffic, or laws that do not protect it as fully as any other traffic is protected.

The holding-company system has been condemned in this country. In its power to do harm it is more of a menace to commerce and public interest as owner and controller of all the instrumentalities of railway carriage than it is when owning or controlling two or more competing railroad lines. As owners of all refrigerating cars the holding company, both in respect to charges and grade of service rendered to the public, would eliminate competition. It would also be the death knell for improvements and style of equipment, as when all railways were served with refrigerator cars by one holding company, although new patents and better cars may be invented, there would be no incentive for providing the better cars.

Mr. STEVENS. Right there, if you please. Does not the Armour Company provide the best possible cars now?

Mr. FERGUSON. No, sir; they have some good cars, but their line as a whole is not equal to some other lines as a whole.

Mr. STEVENS. What other line?

Mr. FERGUSON. For instance, the Santa Fe has a newer refrigerator line and all are modern cars. The Northern Pacific have a very modern car and thoroughly equipped.

Mr. SHERMAN. That is a more expensive car than the average expense of the car you spoke of this morning, is it not? I think you said this morning that ordinarily the refrigerator car cost $1,000. Now such cars as the Santa Fe Refrigerator Company are now using, for instance, cost considerably above $1,000, do they not?

Mr. FERGUSON. I think I did not qualify my answer by "ordinarily." I think I said "testimony to that effect."

Mr. SHERMAN. Perhaps you did.

Mr. FERGUSON. And that applies, as I understand it, to the modern car. There are many refrigerator cars in existence and in use to-day that were built six or seven or eight or ten years ago that have to a certain extent become obsolete, but still are in use, and the point that I make here is that newer and better cars may come into existence and use, but with competition eliminated and the carriers throughout the country served by one company the public would be denied the advantage that such new inventions may offer.

Mr. STEVENS. Special cars are devised for the different kinds of business, are they not, and those cars are used exclusively in the particular kind of business they are adapted to?

Mr. FERGUSON. I do not know to what extent you refer. For instance, a refrigerator car is used for the transporting of many kinds of commodities needing refrigeration.

Mr. STEVENS. That is what I want to get at.

Mr. FERGUSON. And without refrigeration they are used also. They are used as a summer car and as a winter car. The same commodities that require refrigeration in the summer time require the use of a refrigerator car in the winter time to protect the commodities against frost damage, and in the meantime they may be used for the transporting of almost any other commodities except possibly grain, and I understand that they have in some instances been used by some special appliance for grain. I think that is not common in our practice, perhaps.

Mr. ESCH. On your theory, then, the Pullman Palace Car Company would cease making improvements?

Mr. FERGUSON. Well, I don't know whether they have or not. I do not imagine, though, that they will put out of operation cars that may be used——

Mr. ESCH. The theory is that they do keep abreast of the situation.

Mr. FERGUSON. I have ridden on many of their cars that I did not think were abreast of the situation.

Mr. ESCH. But you know that they are constantly making improvements, of course, to satisfy the service?

Mr. FERGUSON. I think that they have many different grades of cars.

Mr. ESCH. Certainly.

Mr. FERGUSON. And some lines may be provided; other lines not provided, and those other lines would perhaps, if free and open competition prevailed, be supplied with the latest improvements.

Mr. ESCH. Of course that is done now by the trunk lines shunting the old cars on the branch line.

Mr. FERGUSON. And it is not a parallel situation——

Mr. ESCH. Your theory is that it would not develop the newest improvements if one car-line company had the field?

Mr. FERGUSON. That is my position.

Mr. ESCH. The Pullman company has practically the whole sleeping-car field, with the exception of the Milwaukee road?

Mr. FERGUSON. But it is not a necessary element of carriage, it is a luxury; but you can not transport commodities that depend entirely on refrigeration for safe-keeping without the use of refrigerator cars. It is quite possible to travel without the use of Pullman cars; it is not possible to transport a carload of peaches from California to New York without the use of a refrigerator car.

I am satisfied that Congress has the power to fully correct the vicious private-car line abuses. If the disturbing of property rights of the car lines tends to deter, then I beg Congress to direct its attention to the millions of people that are being now so violently disturbed and the countless millions of dollars that have been wrongfully taken from the people by the vicious car-line system. The public have already paid the car-line companies many times the entire cost of all refrigerator cars owned by them, and by all laws of justice they should be compelled to reimburse the public that which they have wrongfully taken from them.

Now, as to whether or not the carriers would furnish refrigerator cars. Many of them are so doing. Notably among them are the Chicago, Milwaukee and St. Paul Railway, the Great Northern Railway, the Northern Pacific Railway, the Chicago and Northwestern Railway, and the Illinois Central Railway. These roads furnish as good or better cars, equally as good service, or in fact better service, because on these lines there are no private-car lines to control the routing, sell the tonnage to connecting lines, or merchant car line companies who serve their own interest best by neglecting to properly care for the shipments in their charge. But I will state that it is my candid belief that if you legalize the private-car line system the roads that are now serving the public with refrigerator cars will, in order to make additional profits and enable them to meet all kinds of competition through secret manipulation, either enter into some kind of an agreement with car lines like the Armour Car Line system, or else their own refrigerator cars will be set apart from their other equipment and operated on the private-car line system.

As to whether or not the carriers will supply refrigerator cars if privately owned cars are prohibited, it is unquestionable their lawful duty to do so, and I see no good reason why they should be relieved of that duty, and upon no other theory than that such is not their duty is it a question as to whether in this respect they may exercise their own option.

In my opinion carriers who have been given monopoly upon our highways should be required to fully protect the commerce originating along their several lines by owning and having under their control all the carrying equipment required for safely transporting such commerce; and for the willful neglect or failure on the carrier's part the carrier should be made to respond fully in damages to the injured party or forfeit its charter.

There has been some question about Armour dealing in these commodities. That is, there have been counter statements. There is no question about it if inquiry is made. I believe they desisted, at least

to a certain extent for a short time, but since the Michigan car line hearings with respect to the forced use of the refrigerator car for transporting peaches and other perishable commodities have been held the findings of the Commission are before us, and they are to the effect that the charges were extortionate and unlawful. Still no final order has been issued, because, as I understand it, largely from lack of harmony among the Commissioners themselves as to just exactly what they should do, and just exactly what their jurisdiction in the premises is. I understand no final order has yet been issued.

I read from the Eighteenth Annual Report of the Interstate Commerce Commission, this being their last report. [Reading:]

The stockholders of Armour & Co. own the stock of the Armour Car Lines Company. Certain commission merchants claimed, in the course of our investigation, that Armour & Co. was dealing in the fruits and vegetables which were transported under refrigeration in the cars of the Armour Car Lines Company, and that its control of these cars gave it an important advantage over them in the handling of these commodities.

It is apparent that this would be the case if Armour & Co. does, in fact, deal in these articles. The right to use a car itself while denying one to its competitor; the right to name whatever charge it sees fit for the use of that car when used by its competitor; a knowledge of the exact location of every carload owned by its competitor, must give to Armour & Co. a most decided advantage, which, in these times of small margins, might amount to a practical monopoly in some sections. The Armour Car Lines Company denied, however, that Armour & Co. was engaged in the handling of fruits. This was so stated at our hearing last June. At a subsequent hearing in September the attorney of the Armour Car Lines said that Armour & Co. had finally withdrawn from business of that character, from which we infer that the charges of the complaining commission merchants might have been in a measure well founded.

It was conceded that Armour & Co. is engaged in handling dairy products, including poultry and eggs, also vegetables—among other things, potatoes—which are produced in certain parts of Michigan in large quantities.

Referring to the handling of dairy products, including poultry and eggs, they are admittedly engaged in that now. I see no law to prevent them from extending, and if they do not happen at this moment to be engaged in the fruit business I do not think it signifies anything. [Continuing to read:]

The movement of potatoes from this section during the winter months requires refrigerator cars, and shippers experience great difficulty in obtaining such cars. We are in receipt of complaints from the shippers of potatoes in Michigan, stating that Armour & Co. is buying in competition with them; that while they are unable to obtain cars, Armour & Co. sends its own cars to whatever point may be desired, and thereby secures a most important advantage in the item of transportation, which is gradually driving other buyers out of the market. These complaints were received too late for formal investigation at the recent hearing referred to. It is manifest that Armour & Co. might obtain that advantage if they saw fit to do so. The proper supply of cars often determines the ability to engage in the handling of a particular commodity, and the person who controls that supply has an incalculable advantage over his competitor who does not.

Mr. STEVENS. Have you heard of Armour & Co. attempting to do a vegetable business in any other section?

Mr. FERGUSON. Not recently; no, sir. [Continuing to read from the report of the Interstate Commerce Commission:]

Armour & Co., as is well known, is an extensive shipper of dressed meats and packing-house products, from 150 to 200 cars being sent east daily from its plant at Chicago alone. It is also well understood that this firm, in common with all other large packing houses, ships its products in its own cars, which in this case are those of the Armour Car Lines Company. The use of these cars is paid for upon a mileage basis, being at the rate of 1 cent a mile from the Missouri River to Chicago and three-*fourths of a cent a mile* from Chicago east, unless the traffic moves via Montreal, in

ı case 1 cent per mile is paid, the allowance being for the movement of the car
:h directions. Whether a particular mileage is or is not profitable to the owner
›rivate car depends largely upon the manner in which those cars are used. If
ıstant motion a given wheelage rate is much better of course than when use is
›nstant. These cars of the packers are moved east upon an express schedule,
he testimony tends to show that their owners require the prompt return of the
which usually come back empty. Without doubt, under the conditions of their
ıe mileage paid is extremely profitable. This sufficiently appears from the fact
the packing houses at Chicago have recently entered into a contract with the
Marquette Railroad Company, extending for a period of seven years, by which
:ompany agrees that the present rates upon dressed meats and packing-house
ıcts shall not be advanced during the life of the contract——

want to call attention there to the business wisdom that prompts
ı to look so far ahead as seven years to know definitely upon what
s they can do business with the railroads then, and how long they
villing to let us look ahead. They are not willing to let us know
ıty-four hours ahead what we may depend upon. We are not
ıg anything but what they contend strongly for in their own
'ests. [Continuing to read:]

hat the mileage paid for the use of these cars shall not be reduced. In consid-
›n of this, the packing houses each agree to deliver to the Pere Marquette a cer-
ıumber of cars weekly.
inly, to whatever extent the amount paid for the use of these cars exceeds a
›onable compensation, the owner of the car is preferred in the matter of the
ıt rate to a shipper of the same commodity who owns no cars. This discrimi-
ı can only be prevented, so long as the use of private cars is permitted, by
ng the compensation for the use of the car which is paid to the owner of the
: carried subject to public control.
nust not be inferred that all of the abuses springing from the use of the private
'e enumerated above.

ıere is considerable more in the Eighteenth Annual Report of the
mission that will give more or less light on the situation.
›t wishing to occupy the time of this committee uselessly, and
ng gone into these practices in large detail before the Senate com-
ee, and as I understand that evidence will be placed before this
mittee, I will conclude as briefly as possible, but would like to
one or two paragraphs from my opening statement before the
ıte committee. [Reading:]

e private car-line companies, in the dual capacity of carrier and merchant, can
· honestly serve the public, and to continue them in any form is an extremely
›rous departure from the now existing legal practices.

think that is absolutely correct. [Reading:]

rther, such a law would double the duties of the already overburdened Interstate
nerce Commission, increase the almost nonunderstandable and multitudinous
schedules now filed with the Commission, and divide the responsibilities
een two common carriers, so that it would be next to impossible to fix a
nsibility.

nybody that was honored by having an opportunity to listen to
ident Stickney, of the Great Western road, in his address last
t, would understand what I mean by almost nonunderstandable
multitudinous tariffs now filed with the Commission, and to further
ımber those tariffs and increase them by having contracts and
ements and private car-line tariffs piled up would render such
dules entirely valueless and would put beyond the reach of almost
man any definite knowledge so far as he may be able to obtain it
ı the tariffs filed. [Reading further:]

ain, by and through the close relationship existing between carrier railway
any and carrier car-line company the channel would be provided for a thousand

and one evasions of any law now existing or proposed. The shipping public could not detect a manipulation through such a channel, and the Commission doubtless would not undertake of its own motion to do so. * * *

There is not one good reason why it should exist and countless reasons why it should not. To make common carriers of car lines by legislative enactment, if it can be done, in my opinion, would prove an ineffectual remedy, further complicate an already complex proposition, raise new questions for shippers to litigate at their own expense, give a great impetus to the car-line business, create a refrigerator monopoly, through which would be obtained the control of all food supplies, and build up a greater and more vicious trust than the world has ever known or dreamed of. If the car-line system be legalized and continued upon the same theory the now interested carriers and car lines are contending for the right to continue this system, they will next be contending for the right to extend this system to cover and include box cars and all other instrumentalities of carriage, and they will maintain then, as now, that the carriers can more economically provide themselves with equipment under the holding company system than for each carrier to own its own equipment, because of the varying demand for the different kinds of equipment at various seasons of the year. And if the privilege to continue the system with respect to one style of equipment is granted, I think it must be granted with respect to other kinds of equipment when demanded.

That the carriers have failed to perform their full duty to the public (their common-law duty of supplying cars), and that some certain locality has been neglected by the carrier with respect to furnishing cars, and that such localities have been served by these car-line companies at exorbitant and extortionate charges for the service is not a sufficient reason for legislation that would bring the independent dealer, who would wish to use the common highways, under the domination of his powerful trust competitor, thereby absolutely legislating into serfdom thousands of law-abiding citizens who are entitled under our Constitution to equal rights and protection in pursuing their chosen vocation.

The proper course, in my judgment, and of those that I represent, is to eliminate, root and branch, all these barnacles from our common highways, and to say to the carriers, "You, whom we have given sovereign rights and franchise, must discharge your full obligation to the public, the obligation you assumed when you accepted the franchise, and you can not delegate any part of that duty to special interests under any terms. You must keep these highways open alike on equal terms to all, and you must furnish all the necessary carrying equipment to protect the commerce originating on your several lines. Failing in this, you will forfeit back to the people the charter they gave you."

Any remedy designed to continue car lines will place independent dealers at such a disadvantage that they will be compelled to bow to the inevitable and yield up their business and independence to the great merchant car-line trust.

Mr. ESCH. Your remedy is a forfeiture of the charter of the car lines?

Mr. FERGUSON. I do not know that they have any charter.

Mr. ESCH. I did not understand your last language, then.

Mr. FERGUSON. The forfeiture of the charter of the carrier.

Mr. ESCH. The common carrier?

Mr. FERGUSON. Yes; if they fail to protect the commerce that by all laws of justice and right they should be required to protect.

Mr. RYAN. Private care lines, in your judgment, should be wiped out entirely?

Mr. FERGUSON. Entirely; absolutely. I think therein lies the only safety to independent commerce in this country.

Mr. ESCH. These charters are issued by the States and not by the Federal Government.

Mr. FERGUSON. I understand. There are many complex propositions that arise in the settlement of this difficulty, but I believe that they can all be met. I do not profess to be able to meet them myself other than to outline what may be a practical remedy and leave it for legal minds to work out and overcome the legal difficulties.

Mr. ESCH. We are glad to get your ideas on the subject.

Mr. FERGUSON. Here is further evidence with reference to their being dealers. Here is a letter I have, which I will read:

ARMOUR & Co., *Chicago, Ill., May 13, 1904.*

ARKANSAS VALLEY SHIPPERS' UNION, *Van Buren, Ark.*

DEAR SIRS: As we intend to handle quite heavily through the St. Paul office for our branches in this immediate northwest car lots of potatoes, onions, cabbages, and tomatoes, we should be pleased to have you quote us on any one of these by wire or letter on receipt of this, and write us fully, explaining if you will be shipping these items in car lots and to what extent, and what is your season for each.

We will buy this class of goods delivered at our different branches up here and will remit immediately on arrival in full for each car, or we would be willing to pay drafts on arrival and inspection of each car, as a matter of convenience for shipper.

Awaiting your prompt reply, we are,

Yours truly,

ARMOUR & COMPANY.
F. L. P.

This letter was returned to the B. Presley Company, of St. Paul, who are large handlers and dealers in the St. Paul market, and have handled for years a large portion of the products shipped by the Arkansas Valley Shippers' Union. Mr. Murphy, the head of the B. Presley Company, received the letter with this footnote.

Mr. Murphy: I have never answered any of these peoples' letters, as it seems to me they are getting out of their line. They ask commission men to use their cars and then turn around and try and rob them out of their business.

Yours, truly, J. L. REA.

Mr. Rea is manager of that association. That is dated "Vanburen, Ark., May 19, 1904."

I would say that they did handle tomatoes in carload lots in our country. The relative difference between them and our firm is a mathematical calculation, or very close to it, at least, and would be about $140.

Mr. ESCH. Is that exhibit in the Senate testimony?

Mr. FERGUSON. That exhibit is in the Senate testimony. I also want to offer a letter that is not in the Senate testimony. It is a copy of a letter written to the Mortenson Fruit Company, or to one of the firm, by the Fruit Growers' Express Company, one of the allied lines of the Armour car lines, the purpose of which was to place Fruit Growers' Express cars or the Armour Car Line cars in service in the fruit belt which is tapped and served by the Northern Pacific Railroad Company. Mr. Mortenson, one of the firm, is residing temporarily in West Duluth. This letter is dated Portland, Oreg., June 16, 1904, and is as follows:

We have received communication from your brother in our Los Angeles office advising that you were somewhat more inclined to use N. P. Bohn cars for shipments from Hilton to Chicago this year than our own. We regret to hear this very much, as we were under the impression that the service we gave you last year was entirely satisfactory, and hoped on this account that we would be able to do business with you again this year.

We understand that you claim that it costs about $20 less to use the Northern Pacific car than one of ours. There surely must be some mistake about this, for the initial icing of a Northern Pacific Bohn car costs between $25 and $30, and if they use any ice between St. Paul and Chicago same is charged up against shipper. Of course if they do not put any ice in the car they will not charge for it, but we insist upon icing cars between these two points, as we believe it should be done, consequently we make a higher rate to Chicago than to St. Paul or Missouri River. Our rate from Milton to Chicago is $45.

I think that distance is about 2,000 miles. Now, compare it with that $73 rate from Gibson, Tenn., to Chicago, or the $45 rate from Michigan to Duluth, or the $55 rate from Michigan points to Denver, or the $45 rate from Poseyville, Ind., a distance, I should judge, not much in excess of 150 miles—I don't know exactly.

As to the difference in size of cars of this company and Northern Pacific Bohn, would like to say that ours are just as wide, a little bit higher, and about a foot and a half shorter. We would like, however, to communicate with you further.

Yours, very truly,

FRUIT GROWERS' EXPRESS.
By S. A. HERING.

I only offer this to show that where there is any competition they would gladly serve the public at less than one-half of what they charge where the exclusive contracts obtain, and it may be fairly inferred, I think, that where they voluntarily serve the public they are doing so at a good fair profit. And if there be a profit in serving the Oregon fruit shippers on a basis of $45 from Oregon to Chicago, what would you call it when they served the Poseyville melon growers on the basis of $45 for about 150 miles? Some may call it profit.

In my opinion we need a remedy such as will require common carriers engaged in interstate commerce to furnish all the rolling stock and other instrumentalities for the safe carriage of freight originating on their several lines and forbid all such carriers hauling cars carrying freight of any and every description that are not owned or controlled by such carriers themselves or by other common carriers, bona fide such, and not created or existing for any other purpose, and prohibit the common-carrier industrial railroads.

I would provide that every charge incident to the safe carriage of freight shall be comprised in the freight rate as fixed and filed with the Interstate Commerce Commission, so that the same shall furnish full and complete data, from which it can be determined what it will cost to safely transport any article of freight from one to another given point, so as to leave no room for contention upon any item of such charges.

Further, I would prohibit common carriers engaged in interstate commerce, their officers or agents, dealing in any article of freight carried by them.

Next, provide that wherever a shipper claims to have been damaged by any act of a common carrier, subject to the provisions of the interstate-commerce act, such shipper may bring suit in the United States district or circuit court of his own residence and make the process of such courts in such case run to any and every point in the United States.

Also prohibit common carriers, or their employees, giving information about shipments while en route to any other than the consignor and the consignee and their agents and employees.

Lastly, place express companies under the provisions of the laws now existing and that may hereafter be enacted, relative to common-carrier railroads engaged in interstate commerce.

Mr. ADAMSON. I do not want to consume time in going over what has been thrashed out while I have not been here. Have you explained what your remedy is for the private car line abuses?

Mr. FERGUSON. I have just been going over that.

Mr. ADAMSON. I will read it then in your statement when it is printed.

Mr. FERGUSON. Now, I have done with what I have to say. I might say much more, but it would be a reproduction largely of what I have said before the Senate committee, and if it is desired to put any questions to me I will endeavor to answer them as intelligently as I can.

Mr. ADAMSON. I wanted an indication of what legislation you proposed, and I will be able to get that from the record.

Mr. DAVENPORT. Is it in accordance with the practice of the committee to permit a question or two from others than the members of the committee?

Mr. STEVENS. I think so; if you will give your name and say whom you represent.

Mr. DAVENPORT. Daniel Davenport; Bridgeport, Conn.

Mr. FERGUSON. I would like to ask, before proceeding to answer any questions for the gentleman, whether the same privilege of cross-examination will be extended to me?

Mr. DAVENPORT. I would like to ask the gentleman if he has legal advisers in his association?

Mr. FERGUSON. Yes, sir.

Mr. DAVENPORT. Is it your understanding that these private car lines are common carriers?

Mr. FERGUSON. No, sir.

Mr. DAVENPORT. Is it your understanding that they are engaged in interstate commerce?

Mr. FERGUSON. I do not believe the car lines are, except as the agents of the common carriers.

Mr. DAVENPORT. Then what authority do you think Congress would have to regulate their business?

Mr. FERGUSON. I do not think Congress has any authority to regulate their business. They have the right to place the carriers under any prohibition that in their wisdom may seem wise. That is the way we propose to reach the matter. I think that they have no right to regulate the affairs of the private car-line companies.

Mr. DAVENPORT. The furnishing of a car, renting of a car to a railroad company, you are not advised is interstate-commerce business?

Mr. FERGUSON. The renting of it? I do not think it is.

Mr. DAVENPORT. And the furnishing of ice to the common carrier to discharge its common-carrier duty is not an interstate-commerce business, is it?

Mr. FERGUSON. It pertains to interstate-commerce business.

Mr. DAVENPORT. So far as the carrier is concerned.

Mr. FERGUSON. So far as the carrier is concerned, yes.

Mr. DAVENPORT. But those who supply the ice——

Mr. FERGUSON. That is not interstate-commerce business.

Mr. DAVENPORT. I think you have been soundly advised.

Mr. ADAMSON. Are those cars used to carry freight from one State to another?

Mr. FERGUSON. Yes, sir.

Mr. ADAMSON. Are those conditions made in the contracts that are made between the common carriers and the private car-line companies—that the cars will be used in transporting commodities from one State to another?

Mr. FERGUSON. I do not know that it is set out in express terms. I would have to refer to the contracts.

Mr. ADAMSON. They are so used?

Mr. FERGUSON. Yes, sir; I think the contracts contemplate that.

Mr. MANN. The icing of these cars is necessary, is it not, in order to carry on this interstate commerce?

Mr. FERGUSON. Without the icing of those cars it is in no sense transportation.

Mr. MANN. It is one of the necessary agencies?

Mr. FERGUSON. Yes, sir.

Mr. MANN. And in that sense it is a part of interstate commerce?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. And it is only one contract you make—one contract covers everything? For example, you buy strawberries in Arkansas; you make one contract for carriage from the Arkansas shipper to parties at Duluth?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. And that includes all of the agencies for delivering the goods to the consignee in the proper condition?

Mr. FERGUSON. We always supposed so, but according to later-day railroad doctine it does not.

Mr. DAVENPORT. A suggestion was made, and an inquiry put, that the icing of the car is a necessary facility in the transporting of freight. Is the furnishing of the ice, putting the ice in the car, any different from that of supplying coal to the carrier for its locomotives, and putting it in a car or other appliance which the common carrier may require?

Mr. FERGUSON. To my mind it is a necessary part of the service, as a whole, just as coal is.

Mr. DAVENPORT. And in the same relation legally?

Mr. FERGUSON. Legally; yes.

Mr. DAVENPORT. It has the same legal relation?

Mr. FERGUSON. Yes, sir.

Mr. MANN. I am afraid you have not been well advised, then.

Mr. FERGUSON. That is my own conclusion; do not charge it to my attorney. I had reference to that being a part of the transportation duty, and without the performance of it it would be impossible to transport.

Mr. MANN. The purchasing of coal by a railroad for its own use in an engine, and the purchasing of ice to put in a car, necessary to the carrying of particular freight, are entirely separate propositions.

Mr. FERGUSON. I did not understand that was the question. I thought it was with reference to the work of putting it in. I do not think that the question of icing itself has been passed upon by our higher courts. But I think the question has been before the courts in other cases, the question has been fairly up. For instance, there is the Stockyards case.

Mr. STEVENS. We have those cases here.

Mr. FERGUSON. I think it is the Keeth case, where the railroad company attempted to delegate to a private corporation the right to own and operate stock yards through which all competitors must discharge their cattle, and that company imposed such charge as it might see fit for that service. I think the court held that it was contrary to law and ordered the contracts canceled, notwithstanding the showing

was that a large amount of money had been invested in those stock yards.

The same plea of property rights was made in that stock-yards case as is made in the case of the car lines with respect to legislating away their rights to use these cars. I do not for a moment believe that property would be confiscated. I think that question would settle itself very quickly between the carriers and the car lines. I think if the use of these cars was prohibited by law, that, inasmuch as they are good business men, they would get upon some common ground and bargain for the sale of those cars.

Mr. ADAMSON. Do you not think it would be better and fairer, if they were useful at all, instead of outlawing them—destroying them—to regulate them?

Mr. FERGUSON. I think that is an absolute impossibility.

Mr. ADAMSON. You have three now running upon the same lines; you have the passenger car and the express car and the Pullman car. Why not add a fourth?

Mr. FERGUSON. They are engaged in a little different line of business, and in this case here the second common carrier becomes a merchant; it is essentially the same thing as the railroads of this country becoming the merchants and fixing the rate for independents.

Mr. ADAMSON. You understand we are not depending upon the act to regulate commerce for our authority, but upon the article of the Constitution that authorizes Congress to regulate commerce between the States, which applies to a jew peddler or a yoke of steers as it does to the trains; we can regulate anything that does that, no matter what it is or who it is.

Mr. FERGUSON. In my opinion such a remedy would in a very short time result in a monopoly. I think it must result in a monopoly, a monopoly of the instrumentalities of carriage. I do not believe that is wanted, and I think the same system would spread and continue until it absorbed all of the equipment of the carriers.

Mr. ADAMSON. You say you have a monoply now. We might give you a better monoply.

Mr. FERGUSON. We have not a monopoly in respect to all territory; here and there there is a free corner left.

STATEMENT OF MR. GEORGE B. ROBBINS, OF CHICAGO, PRESIDENT OF THE ARMOUR CAR LINE AND DIRECTOR IN THE ARMOUR COMPANY.

Mr. ROBBINS. Mr. Chairman and gentlemen, I have here a few notes that I have prepared, which perhaps it would be best for me to follow.

The CHAIRMAN. Suit your own convenience.

Mr. ROBBINS. I wish to be understood in what I may say on the subject of private car companies to refer particularly to refrigerator cars, which comprise nearly or quite 70 per cent of the total number of private cars in use, and still more particularly to the equipment of the Armour car lines.

I have been in active charge of this branch of the Armour business since the early days of refrigerator cars, and a brief statement of their necessity and the development in the various industries dependent thereon may lead to a more intelligent understanding of the business in which private car companies are engaged.

Prior to twenty years ago suitable cars were not obtainable, and their building by private companies was encouraged by the railways, and from that time to the present they have continued to do so, particularly for packing-house products, fruit, berries, etc., recognizing that the service required is of a special character, necessitating expensive equipment, extensive icing facilities, and a large organization all over the country.

When the building of special fruit cars was first contemplated by the Armour interests it was a grave question whether the regularity of the crops year in and year out would justify embarking in the enterprise; and the phenomenal increase in the shipment of fruit, berries, etc., during the last ten years is largely due to the introduction of an ample supply of special refrigerator cars, which, under careful supervision and systematic refrigeration, has widened the distribution of such products by constantly improving methods in this special service. Indeed, the railroads and growers generally welcomed the advent of suitable cars and service with which to get their products to market.

No one else appeared with the courage, even under exclusive contracts with the railroads, to take the chances of building sufficient cars, from time to time, to keep abreast of the berry and fruit business, and put a stop to the enormous losses theretofore experienced by both the growers and the railroads from lack of sufficient and suitable cars.

The private car companies, owners of special cars, furnish them to the railroads at a rental, generally of three-fourths of a cent per mile run for refrigerators, and no charge whatever is made against the shipper for their use, the railroads charging only their regular rates for transportation of the contents, the same as if the roads furnished their own cars. The rental therefore is a matter between the railroads and the car companies and does not affect the shipper or the public.

The great majority of shipments requiring refrigeration (berries, fruit, etc., in particular) are ordered refrigerated by the shippers; the car companies supervise the loading and stripping and furnish the local initial icing, and reice the cars as required at established stations.

Contrary to the general impression, therefore, private car companies are not engaged in transporting any commodity of commerce, nor are they engaged in any interstate business in furnishing ice at fixed local points, any more than the coal company furnishing coal to the locomotive hauling a train of interstate freight.

A good illustration of the distinction between shipments refrigerated and those not refrigerated is the orange business from California, consisting of from 25,000 to 30,000 carloads annually. About half the shipments are started under ventilation without ice, and when the thermometer falls below the freezing point the ventilators are closed and cars used for protection against frost. The railroads pay the car company all rentals for such cars and no charge is made against shippers. When the season advances and the orange becomes ripe or puffy and shippers order cars refrigerated, the car company furnishes the initial ice and the reicing at fixed local points along the lines of the railroads in the different States where it has icing stations, and a refrigeration charge is made therefor.

Equipment is parked in advance for business in widely separated parts of the country at different seasons, with consequent delays and idle cars. It is a well-known fact that the fruit and berry crops origi-

nate in small sections or localities at widespread points throughout the United States, and mature at different times of the year, and when matured and ready for market, must be moved promptly, the shipping season lasting generally only a few weeks. For example, the peach crop of Georgia for the year 1904 consisted of over 5,000 carloads, which were moved by the railroads in our cars to distant markets, the harvest season lasting only about six weeks. About 4,000 of these individual special refrigerator cars were required by the railroads to handle that crop. For the local service that was required in loading, stripping, and icing these cars by our company, a force of upward of 50 agents and inspectors, in addition to laborers, was required.

The estimated crop in Georgia last year was 4,000 cars. On that estimate an adequate supply of ice was arranged for in advance, and not until the crop was moving was it found that the estimate was far short and a thousand cars more than estimated were offered and taken care of. To meet this situation ice had to be shipped from Lake Erie in train-load lots at great additional expense but without change over our published charges for refrigeration.

Mr. STEVENS. What do you mean by published charges?

Mr. ROBBINS. We publish a regular refrigeration charge. I will take that up now, or come to it later.

Mr. STEVENS. If you will come to it later, it will be all right.

Mr. ROBBINS. Another example is Michigan, where in an ordinary year 3,000 carloads of peaches are moved by the railroads in our cars in the space of six weeks. This requires about 2,000 individual special fruit-refrigerator cars.

In North Carolina last year we refrigerated some 3,000 cars of strawberries within a month, or an average of 100 cars per day. One of our principal ice-storage houses in that district burned at the opening of the season, and we bought ice at distant points at greatly increased expense for freight and shrinkage without advancing the charge to shippers.

In Idaho last season our ice house at Payette burned, and in some cases we were unable to obtain supplies for initially icing cars, and claims for large amounts have been received from shippers for damages from unavoidable causes.

Even with our facilities for doing business in every State in the Union, Mexico, and Canada, we are likely to have several thousand cars idle during part of the winter season, as comparatively little fruit is maturing at that time.

Then again, it often happens that the fruit crop is cut short or practically ruined by excessive rains, windstorms, or frosts, after the necessary cars have been packed, and sometimes iced, for the movement of the business. I might go on and cite other examples, but these seem sufficient to illustrate the hazards and vicissitudes of the business.

The refrigeration charges to the public are based on cost of ice, supervision, etc., together with a reasonable addition thereto for general expenses, claims, contingencies, and profit, and are as low as consistent with first-class service. These charges are printed and distributed freely among shippers and railways.

Here is a sample of one of our tariffs. They are sent out as widely as possible. There is nothing secret or private about them. Our district offices are furnished with a full supply, and anybody can have them on application, either to our district offices or to our home office. Mr.

Ferguson referred to being unable to get refrigeration rates at St. Paul. I do not see anything out of the way about that. Duluth is not an originating point for fruit, and naturally nobody there has a tariff. If he applied to our district office or to our home office he would have had a refrigeration tariff by return mail; they would have been only too glad to have sent him one.

Mr. STEVENS. I understood that he applied to the local office of the railroad company and they could not obtain them.

Mr. ROBBINS. I do not think that was the proper place to apply. The rates to Duluth are not posted there.

Mr. STEVENS. He could not seem to obtain by telegraph the information he desired.

Mr. ADAMSON. I am afraid you are laboring under a minimized impression of the importance of Duluth, which you would not have if you would read Proctor Knott's speech on Duluth.

Mr. ESCH. You not being a common carrier of course do not feel that it is incumbent upon you to publish your rates for that service?

Mr. ROBBINS. No; I do not know that there would be any objection, but we have not done so. With one or two exceptions, I have not heard of any complaint of our not doing so. If we filed them at Washington or in our local depot I dare say this complainant would not find the tariff in that case.

Mr. STEVENS. When do you make out these tariffs?

Mr. ROBBINS. The current tariff, as shown on its face, is good for the season only, and we generally make them up during the winter and spring for the coming season.

Mr. ESCH. Do they fluctuate much from year to year?

Mr. ROBBINS. No; they never advance; they sometimes are reduced. In our contract with the railroad companies we generally figure out what is a fair rate, considering all conditions, and we specify those rates in our agreements which shall not be exceeded, and frequently we have made reductions in those rates voluntarily. I can quote you cases of that, if you like. In Georgia, for example, previous to 1898 there were about five different car lines operated in that State. The rate of refrigeration was $90 a car to New York. Beginning with 1898 we made an exclusive contract with the Central of Georgia Railroad to furnish all their cars, in consideration of which we made the rate $80. In 1901 we voluntarily reduced the rate to $68.75 a car, because the volume of business had grown a little larger and we were able to get a little cheaper ice. Further, in that connection, in California, which is the largest fruit-producing section in the country, turning out as it does 30,000 to 40,000 acres of fruit a year, previous to the time we operated the rate, for example, from Sacramento to Chicago was $125 a car——

Mr. MANN. The rate for icing, you mean?

Mr. ROBBINS. The rate for icing. When we made that contract, which was the time we entered the business, we reduced the rate to $90, a reduction of $35.

Mr. STEVENS. Under an exclusive contract?

Mr. ROBBINS. Under an exclusive contract, on the theory that we or anybody else could do the business more cheaply when one company was handling it all than if it was distributed among several companies. Previous to that time there had been three or four different companies operating from California. In 1899 we reduced the rate

slightly by making it apply on more weight. In 1901 we reduced it again, voluntarily, to $80 a car, making a reduction of 41 per cent in the rate from the time we went in there under an exclusive contract.

Mr. ESCH. For your icing in southern territory you of course had to ship the ice in from the North. How do you supply the ice?

Mr. ROBBINS. Ordinarily in the South we use manufactured ice.

Mr. ADAMSON. I was going to ask you if those ice plants at Columbus, Macon, and other places are not sufficient to accommodate you?

Mr. ROBBINS. Ordinarily they are, but in a season like last year there was not local ice enough in the whole southern country. We shipped from Pensacola and Jacksonville and from Lake Erie on the north. We bought all the ice we could find and had to go as far as Lake Erie to get enough.

Mr. MANN. Referring to these charges from Sacramento, would that also apply from southern California?

Mr. ROBBINS. No, sir; the northern California rate and the southern California rate are handled separately. They are two separate and distinct propositions.

Mr. RYAN. When you made a reduction of the rate from Georgia points to New York did you then have exclusive contracts with all the Georgia roads or only the one you mentioned?

Mr. ROBBINS. Well, we may not have had exclusive contracts with all the roads, but I think we did with the lines originating perhaps 90 per cent of the business, practically all.

Further, in answer to Mr. Adamson's inquiry, I am reminded that in 1898, when we first built the ice house at Marshallville and Fort Valley, we had to ship ice from Maine by vessels. That was in 1899, I should say. In that year, after we had filled those houses, there was not a single acre of peaches shipped out of Georgia. The peach crop was destroyed by frost, and that ice melted away.

Mileage alone does not afford reasonable remuneration on cars in the fruit business, owing to the unavoidable delay to equipment awaiting loading during the intervals between seasons. Strictly first-class refrigeration, by the use of suitable cars, full icing, and competent supervision, is invaluable to the shipper of highly perishable berries, fruit, etc.

After many years' trial it has been found that the only practicable method of handling the fruit and berry business of any large producing section satisfactorily is for the car lines to agree to furnish all the cars and ice required (in some cases to the extent of 5,000 individual cars) or be responsible for failure to do so, and for the railroad to agree to use such cars only.

Arrangements are then made, generally several years in advance, for equipment, ice supply, stations, and other facilities not obtainable on short notice. The car company does the refrigerating cheaper under exclusive contracts and agrees, in making such contracts with the railroads, not to advance the refrigeration rates, and frequently reductions have been made voluntarily when conditions warranted.

Expenditures have been made from time to time by our company until upward of $15,000,000 have been invested in equipment, repair shops, icing stations, and other facilities scattered throughout the country.

Armour Car Lines, a corporation owning and operating cars, have never bought or sold any of the product transported in their cars.

Armour & Co. and Armour Packing Company have, to a limited extent, dealt in produce—particularly potatoes and apples, which do not require refrigeration—but have ceased dealing in produce since May, 1904. Armour & Co. and Armour Packing Company do a limited business in butter, eggs, and poultry as a natural adjunct to their packing-house business. This business is handled on equal terms with other shippers, and Armour Car Lines do not solicit any other business of this kind.

Now, in that connection I want to enlarge a little on that subject. The statements made here about dealing in the articles transported are absolutely incorrect. Armour & Co. or the Armour Packing Company or any Armour interests have never dealt in fruits. It was stated here to-day that they had, and were now dealing, and might again deal, in fruit. Absolutely the contrary is the case. Of course, in saying that I draw the distinction between fruit such as peaches, for example, and potatoes and beans, which we buy for canning, and other articles generally classed as produce. Our car business, in the main, is carrying highly perishable stuff, such as strawberries and peaches, in which we have never dealt in any way, shape, or manner. We never have bought or sold—any Armour interests—a car of Michigan peaches or a car of Georgia peaches, although that intimation, at least, has been very strongly thrown out here.

Now, I want to qualify that broad statement in one respect only. During a period summer before last California had an over-production of fruit. The markets were flooded and they could not place it. The shippers importuned us to help them out by trying to market some of that fruit at some of our branch houses at smaller towns, where they had no facilities to handle it. We responded in that direction and handled 160-odd cars during a period of about two months. None of those cars went to any of the large cities. They went to the smaller places, where carloads of California fruit had not theretofore been handled. Those shipments were handled on consignment for the benefit of the shippers to relieve a glut. We never have handled any such shipments before or since. The exception that I have just stated, while it may have been distasteful to the middlemen, the commission men, was highly gratifying to the shippers. It practically saved them that number of carloads of fruit, which otherwise would have been wasted. That point about our dealing in fruit and being a competitor has been dwelt on time and time again, and I would like to clear up the mind of anyone who has any doubt on that subject.

Mr. STEVENS. We have just had filed by Mr. Ferguson a letter signed by Armour & Co. with reference to a carload of tomatoes from Arkansas.

Mr. ROBBINS. Yes, potatoes and tomatoes.

Mr. STEVENS. Yes.

Mr. ROBBINS. That letter is dated May, 1904, and previous to May we did handle produce to a small extent. That letter fits exactly with my statements. That was before the date on which we quit handling produce. We did handle it in a small way previous to May, 1904.

I might add further in that connection, that of the produce handled by Armour & Co., a comparatively small part was loaded in cars with the Armour equipment. It consisted largely of beans and potatoes and apples, which did not require any kind of equipment, and was shipped largely in box cars, and Armour & Co. handled that in the same way as though the Armour Car Lines did not own any cars. It

was handled on its own merits. The tomatoes we sometimes use in connection with our canning business as we do beans. We put up pork and beans with tomato catsup; and of course we have and always will have to buy some of them for our own use, which I do not imagine anybody would object to.

Mr. STEVENS. What about the charge that you bought in Michigan in competition with vegetable buyers and sellers?

Mr. ROBBINS. We at one time handled some potatoes for Michigan. We never handled fruit or berries. That there was any discrimination in our own behalf by the use of our cars is absolutely untrue. Generally speaking, we did not undertake to furnish cars in Michigan for potatoes. Sometimes, if we had a few scattering cars on the line, they were picked up and used by the railroads, and in that event we did not distribute the cars. If an Armour & Co. shipper was waiting and got one of those cars, we could not distribute that car. The distribution was in the hands of the railroad. It was in the hands of the railroad, and we had nothing to do with it, and I well remember a case where our own produce department undertook to get relief in the way of cars, and they were simply told that they stood the same as any other shipper; that we did not have any cars to spare at that season, and they would get cars the same as any other shipper.

Mr. STEVENS. You do a dairy and poultry business?

Mr. Robbins. We do a butter, egg, and poultry business in a small way, and have for probably ten years, more or less, which we consider a natural adjunct to our packing-house business. Our branch houses sell poultry in the same way as they sell beef.

Mr. STEVENS. In doing that you utilize your refrigerating outfit for the transportation of those articles?

Mr. ROBBINS. We use our packing-house cars in distinction from our fruit cars. On the other hand, we do not solicit any other butter, egg, and poultry shipments in our cars. We do not try to do any competitive business. We simply load our own cars with butter, eggs, and poultry, as a matter of business. For instance, we will be shipping to-day 100 cars of packing-house products, and an order will come in for butter, eggs, and poultry, and that will be run into these cars the same as if it was beef. As to going outside and seeking other butter, egg, and poultry business, we do not do it, and never have done it. It is possible that sometimes, if a road gets short of its own equipment, it might appropriate one of our cars and load it with butter, eggs, and poultry; but we have nothing to do with it, and we would get nothing but our mileage out of it, and we never seek that business.

Mr. STEVENS. Refrigeration is necessary for butter and eggs on long journeys, is it not?

Mr. ROBBINS. Yes, sir; but that almost universally is supplied by the railroads themselves.

Mr. ADAMSON. If they charter one of your cars, they supply the ice?

Mr. ROBBINS. They supply the ice, and we get the mileage.

Mr. STEVENS. Do you sell butter and eggs and things like that in Mr. Adamson's country in Georgia?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Suppose you took them down from Chicago, you would perform the same refrigerator service on that that you would on anybody else's?

Mr. ROBBINS. Yes, sir; that is, the same service would be performed. We might not perform it.

Mr. STEVENS. But if you did perform it there would be the same profit on that as on anybody else's?

Mr. ROBBINS. Well, I might try to make it clear again. The butter, egg, and poultry business, as to refrigeration, is handled a little differently from almost any other commodity. The raiload rate is high on that, and in the rate they absorb the cost of the ice, which I believe is not done on any other commodity—certainly not on beef or fruit, with which I am familiar.

Mr. ADAMSON. Is the same car available to haul the butter and eggs and also peaches and strawberries?

Mr. ROBBINS. It might be fairly usable for it. But in our business we use the same cars for butter, eggs, and poultry as we do for beef and provisions, which is a radically different car from the one we use for fruit.

Mr. ADAMSON. So that you can not utilize the same car in hauling something the year around?

Mr. ROBBINS. Put it in another way. The beef car is not suitable for the fruit, and neither is the fruit car suitable for the beef.

Mr. STEVENS. Why?

Mr. ROBBINS. For one reason the beef car has racks and a roof from which the beef is hung.

Mr. STEVENS. It is a matter of construction?

Mr. ROBBINS. The beef is loaded out of a cooler at a temperature of about freezing and carried in cars having what we call closed bunkers, in which broken ice and salt is used, and a temperature carried only a few degrees above freezing, whereas for fruit cake ice is used, and a temperature of 42 to 45 or even 50° is all that is required. The fruit is also loaded hot out of the fields, and the fruit car has an ice capacity of about two and a half times as much as the cars of some of these railroads that are sometimes offered and sometimes used for fruit, which have about half the capacity of our fruit cars.

Mr. STEVENS. In transporting dairy products, for example, to Georgia you would handle, as I say, your own products just the same as you would anybody else's?

Mr. ROBBINS. Generally speaking, yes, sir; we would make no distinction.

Mr. STEVENS. And if there was any excessive charge or profit in icing or any service rendered on anybody else's products, that would be a discrimination against the products so charged, would it not?

Mr. ROBBINS. I think there is no refrigeration profit on anything that Armour & Co. ship under present conditions.

Mr. STEVENS. That is, you maintain that you do your refrigeration at cost?

Mr. ROBBINS. No, sir. As I have explained, the railroad companies do their refrigerating on the butter, eggs, and poultry at their own expense, and on the beef the shippers do their own icing and take their own risk. It is a regular year round business.

Mr. STEVENS. Then all the refrigerating you do is on the fruit?

Mr. ROBBINS. That is the main business; yes, sir; the main business. The business on which we make these stated refrigeration charges as printed is essentially the business of berries, fruits, and some kinds of vegetables.

Mr. STEVENS. What proportion of your equipment is necessary for the fruit traffic?

Mr. ROBBINS. In a general way we have about two-thirds of the cars in the fruit business and one-third in the packing-house business.

Mr. ESCH. How many in all?

Mr. ROBBINS. Six thousand fruit cars; 8,000 with the packing-house cars.

Mr. STEVENS. Would you estimate what proportion of the year these various cars are used in the business?

Mr. ROBBINS. The packing-house business is, of course, a year-round business, and the cars are in service most of the time. There is usually a dull time around Christmas when poultry takes precedence, and sometimes in the summer the shipments of beef are lighter; but most of the beef cars are in regular service. The fruit cars are in service, I should think, about three-fourths of the time and about one-fourth of the time out of service, principally in the winter.

Mr. RYAN. It was stated here that you have an exclusive contract with some of the railroads which gives you a knowledge of what other shippers are doing. Does that give you an advantage in the market on the dairy products you have handled as against the other shippers?

Mr. ROBBINS. We have no advice whatever of any other dairy shipper's business. If we handle anybody else's dairy business it is because our car is stolen for the purpose and we know nothing whatever about the shipment, and there would be no reason for us to get it. Neither do we get any such advice. The point I think you have in mind has been enlarged on somewhat—that in handling this fruit and dairy business we get advices on everybody's shipments, whether they are in our cars or whether they are not. That is not so. We have no advices except as to our own business—that is, the shipments made in our cars—to enable us to ice them en route.

Mr. ADAMSON. You do not handle other people's dairy products at all?

Mr. ROBBINS. No, sir; generally speaking, we do not.

Mr. RYAN. How would that apply to produce, potatoes, and apples, for instance?

Mr. ROBBINS. Potatoes, for example, are never refrigerated, and if they were loaded in our cars we, at the time at least, would have no advice as to the shipment.

Mr. RYAN. No; not about the icing, but as to the advantage that you might have on the market that might otherwise be taken by others?

Mr. ROBBINS. I think I touch on that point here in my statement especially.

Mr. MANN. Before you proceed, let me call your attention to the statement which was made here by Mr. Meade, in which he stated that if a railroad company with which you have an exclusive contract had any other carload of fruit on that line, you would be advised so that you could run your car in ahead of the other shipper's car, and thereby prevent the sale of his fruit?

Mr. ROBBINS. That is absolutely untrue. We have no advices as to anybody else's cars. As to our own cars, we need to know the destination on route to attend to the icing; but our produce department never knows of that information. We do not handle and never have handled berries and fruit, which comprise perhaps 95 to 98 per cent of the shipments in our cars, so that the inference that we would use

that information to spoil a market for anybody else is simply absurd on its face.

Mr. MANN. It seems to me the statement was made in reference to shipping peaches from Michigan to Boston.

Mr. ROBBINS. I do not see how that could apply, because we have never dealt in peaches; have never bought or sold a car of Michigan or any other peaches, and would have no incentive whatever to put a car into Boston or anywhere; and if a shipment was made in somebody else's car we would not know anything about it, and neither would the department handling our produce—our produce department—know anything about the destination of the shipments of produce, even in our cars. I will come to all that directly.

The agitation against the car companies has been mainly instigated by leagues of commission men, who generally handle on an arbitrary commission basis the fruits, berries, and produce consigned to them. Only in rare instances are they the owners of fruits, berries, or produce received by them in our cars. Among the leaders in this agitation is Mr. Meade, of Boston, who has appeared before this committee. He is vice-president of a refrigerator car company with a million dollars capital stock. I am reliably informed that his company has approached officials of railroads with which our company has dealings and attempted to induce them to build their own cars on a royalty under patents owned by his company.

If the committee will bear with me for a moment I would like to refute a few of the statements made by Mr. Meade to this committee. He stated that Armour & Co. had gone into lines of business in which the fruit and produce men are engaged to such an extent that at the present time the Armour interests control the price of the perishable fruit products of this country. The fact is, Armour & Co. never have been in the fruit business, and have withdrawn from the limited produce business heretofore handled. Furthermore, neither Amour & Co. nor any of their interests have ever dealt in over 1 per cent of the produce carried in Armour cars, and that the control of the fruit produce business by them was had, or even contemplated, is absurd.

He claims Armour & Co. can go into Michigan and buy a car of potatoes, bring it to Boston, get a tariff of $70, and sell it at a profit of $35 when others would lose $35. This statement is most extraordinary, as potatoes are not refrigerated and we seldom furnish cars for them, and even when we do the total gross revenue would amount to $12 to the car line for nearly a month's rental for the car and Armour & Co. would have no margin above anyone else to work on in handling this Michigan product.

Mr. MEADE. My testimony was taken wrong on that point. It was peaches that I spoke of, and the testimony should read "peaches" instead of "potatoes."

Mr. ROBBINS. Peaches? Well, I will take it that way, then. We never have dealt in a carload of peaches.

Mr. MEADE. My testimony, a copy of which I have here in my pocket, was to the effect that we have this situation confronting us, that Armour & Co. can go into Michigan and to this.

Mr. ROBBINS. Likewise, any railroad can go into any business. His statement to the effect that the charge of icing a car of peaches from Michigan to Boston was $20 in 1900, and that when the Armour car *lines obtained* an exclusive contract with the railroads the price was

advanced to $65, and later to $70, is also misleading, for the reason that it was brought out in the testimony before the Interstate Commerce Commission in the Michigan hearing that when the $20 rate was in effect the railroad companies absorbed the cost of the initial icing as well as icing en route, and our charge was for supervision, responsibility, general expenses, etc. When we were later compelled to supply the ice ourselves, as was the case in 1903, the rate was advanced $35 to cover the cost of ice, and consequently the car line's profit was not increased by the advance in rate.

I would like later to submit some further testimony on that.

Mr. Meade's charges that the railroads bind themselves to furnish us information in regard to the cars or shipments of others is without foundation, as the contrary is the fact. The railroads furnish our car lines certain information as to our own cars only, to enable us to attend to the icing and tracing. This information is never given Armour & Co. or used except for the benefit of the owners of the shipments.

His intimation that Armour & Co. might go into his line of business to-morrow, buy up the peaches, and cut the throats of the commission men is also without foundation and purely theoretical and has no force or argument.

He states that we have the power to raise rates at will, or furnish cars or not as we see fit. The contrary is the fact, as contracts with the railroads forbid advance in refrigeration rates and compel us to furnish all the cars required, and to all alike without discrimination, which is invariably done.

The statement made by Mr. Meade, that we say to the railroads they must make an exclusive contract with us or lose so many carloads a week of freight, is imaginary. We make all fruit-car contracts on the merits of the fruit-car service, and without any connection with the packing-house business.

He further stated that he had no means of knowing our charges. These refrigeration charges are printed and widely distributed among the shippers and railroads, and are to be had by anyone upon application.

The statement made by Mr. Meade, that the car company discriminated against the private shippers in favor of the Pennsylvania Railroad by charging that company only $2.50 for icing cars at Jersey City when a private shipper was charged $5 per ton and iced his cars or not as we saw fit, is also without foundation. The fact is we charged the Pennsylvania Railroad and outside shippers the same price of $4 per ton for ice at Jersey City, and are compelled by contract to ice all cars without discrimination, which has been done.

The facts in the Coyne Brothers' case, quoted by Mr. Meade, are as follows: The shippers knew the refrigeration charge and were willing to pay it, and shipped the car of cantaloupes on consignment. The receiving commission company refused to pay for the refrigeration, but nevertheless charged the same in its account of sales against the shipper. We sued the commission company (Coyne Brothers) for the amount of our charge and obtained judgment therefor.

I would say that I have a copy of the account of sales here showing that they received that refrigerator charge, that they did not pay us, and never have paid it up to this date. The shippers were not in sympathy with the movement, and readily agreed that they had selected our car, knowing what the charge was, and desiring the service, and

expected to pay for it. The commission man refused to pay it to the railroad for our benefit, although he has charged it in his account of sales.

Mr. STEVENS. The shipper pays the charge in the last analysis?

Mr. ROBBINS. Yes, sir; the shipper is the one that selects the service and decides on the car and wants the service at whatever expense, and as a rule is willing to pay our extra charge—supposing there is one—because he gets better service.

Mr. STEVENS. Supposing he ordered other cars on other roads where you have an exclusive contract, he could not get them, could he?

Mr. ROBBINS. No, sir; no, sir. On the other hand, if we did not have such an exclusive contract, and he could not get any cars, he would not be able to make his shipment.

Mr. STEVENS. You had better proceed with your statement, I think.

Mr. ROBBINS. The report has gained some circulation that the car companies in some way are used as a means or device for the payment of rebates to shippers. This I desire to deny in the most positive and sweeping way. In that connection I might add that I am equally acquainted with the transportation and traffic affairs of Armour & Co. and speak advisedly on that subject. I am in charge of that branch of the business of Armour & Co. as well.

Mr. STEVENS. You mean to say that it is no advantage to Armour & Co. to have their connection with this car line?

Mr. ROBBINS. Not in any discriminatory way. It is simply an outside investment on its own merits, the same as it might be in a dozen other lines of business. We are in the business to make a reasonable profit. We do not claim anything else. But we do deny that there is any unreasonable profit or margin in the rates. Our rates are not fixed by ourselves solely. We never yet have been able to get an exclusive contract with a railroad until we have agreed that our charges shall not exceed a certain figure, which is supposed to be reasonable.

Mr. ESCH. In that connection Mr. Ferguson cited several instances of icing charges from Gibson, Tenn., to Memphis and from Poseyville to Chicago. I would like to have an explanation of them.

Mr. ROBBINS. The fact is that on the Northern Pacific, in Oregon, there is an ample supply of cheap ice, which we buy and pay for as cheap as we can get it. That is low-priced ice. What it costs I do not remember. It is an ice country. The Northern Pacific rule is that they make no charge en route to St. Paul. Icing is performed just the same, but they absorb it in their rate. It is one of the peculiar practices of that part of the country. I do not know that I can state how it originated, but it is there just the same. The result is that in icing a car from Oregon to Chicago, instead of taking the distance into consideration and making a high rate, we take the cost of the ice into consideration, and with free ice en route we make a low rate. On the other hand, the tomatoes from Tennessee are shipped from small stations where there is no local ice, and ice has to be shipped in there frequently in lots of a few pounds at a time with great loss from shrinkage, and we have to pay the icing en route on that business, which is also expensive there. So that the comparison in difference between the two rates, Oregon on one side and Tennessee on the other, is not a comparison at all. It is absolutely diverse from the principle on which our tariffs are established—our charges are *based on* the cost of the service.

Mr. ESCH. He compares it with the Illinois rate which, where there was no contract, was only $15, I think.

Mr. ROBBINS. That $15 matter I had never heard of until yesterday, and I can not explain it. He does not give any car number, but I can say this, that it is just on the same principle that you do not understand how one man pays $5 for a horse and another man pays $300.

Mr. ESCH. He said that you charged $50 for the same service for which another man charged $15.

Mr. ROBBINS. There is no doubt that that may possibly have happened in a case. The Illinois Central Road may have picked up one of our cars with a small tank and they may have put a ton or so of ice in it. That is a thing that often happens, and they do not ice again en route. The comparison is entirely valueless without particulars; just as valueless as a comparison between the Tennessee rate and the Oregon rate. The conditions surrounding them were probably radically different.

Mr. ESCH. How about the Poseyville rate?

Mr. ROBBINS. The Poseyville rate on canteloupes to Chicago $45, as stated. They originate in a country where there is no ice, and ice has to be shipped in there from Evansville, and the cars are re-iced once en route, and our profits on canteloupes from Poseyville are simply in line with our profits from anywhere else, which we insist are reasonable. The fact that the refrigerator charges may have been greater than the freight charges cuts no figure. A railroad might switch a car under refrigeration for $5, and it might cost us $25 to put in the initial ice. The initial ice is the important figure in making a rate. The distance cuts no particular figure. We do not consider the distance. The question is what the cost is—the expense. It has been claimed here that the connecting railroads, such as the Northwestern, the St. Paul, and others, were willing to furnish cars for Michigan business. I would like to read a short extract from the testimony of Mr. Rowley, general freight agent of the Michigan Central Railroad, at the late hearing on this subject.

Mr. DECKER. You used largely the M. D. T. cars on your line prior to the Armour Car Line contract for this fruit, did you not?

Mr. ROWLEY. No, sir; only to a small degree.

Mr. DECKER. What cars did you use?

Mr. ROWLEY. Such cars as we could get from connecting lines.

Mr. DECKER. Was your greatest trouble in securing cars for the fruit business as to those going to eastern points, like Boston and New York.

Mr. ROWLEY. No, sir; the difficulty did not seem to be confined to any one direction. There was trouble at all times in all directions.

Commissioner PROUTY. Your judgment is, that without a contract with the Armour Co., as you are situated to-day, you would have difficulty in supplying the Michigan shippers?

Mr. CROWLEY. We consider it would be impossible.

There has also been considerable testimony on the question of comparative value of our refrigeration, particularly from Michigan. I would like to read from the evidence of a few of the witnesses, who were shippers, at that hearing. I will first read from the testimony of Mr. Gurney:

Mr. URION. State to the Commission in your own way and in your own language your feeling with respect to the installation of Armour cars on the line of the Pere Marquette—the advantages and disadvantages.

Mr. GURNEY. Well, it is a great advantage to the growers in our place and county. We have only one railroad, the Pere Marquette. In 1899, 1900, and 1901, when peaches

came on with plums and cherries, we could get no cars. The railroads knew that, for instance, at Grand Rapids and at different places where there were two roads, if they did not give the buyers the cars some other road would, and once in a while we could get an old car—something that the buyer would not have—and the result was that in 1899, 1900, and 1901 we could not get any buyers. Grand Rapids had plenty of buyers, and they could pay a dollar a bushel, and we had to ship ourselves and get nothing. The reason we could not get any buyers was they would not come there and we could not get any cars. I sold my peaches one year, I think it was in 1899, to a party with the understanding that I was to have so much a bushel, I think it was a dollar, provided he could get cars. He took quite a number of cars and then told me that he could not take any more, that he could not get cars.

Mr. URION. Then the installation of these cars has resulted in diverting shipment from your community from Chicago and other points and far distant points?

Mr. GURNEY. Yes, sir; since the Armour cars came we could get good service and plenty of buyers, and we get our peaches through to Connecticut, Boston, New York, and Columbus, and do not have any trouble.

Mr. URION. But you have to pay a refrigerator charge?

Mr. GURNEY. But the refrigeration charge does not amount to anything compared with service. Since the Armour cars came in 1902 and 1903 I have made 50 per cent more as a grower than I did before. I never got a refrigerator car that I was dead sure would take my fruit to destination until the Armour people came in.

Next I will read from the testimony of Mr. Corbin:

Mr. URION. Prior to 1902 and 1903 where was the bulk of stuff in your community shipped?

Mr. CORBIN. Most of it in those years, by not having refrigerator cars and buyers there to buy of us, the bulk of the crop was shipped to Milwaukee and Chicago.

Mr. URION. Were they regarded as markets that were as good as outlying markets?

Mr. CORBIN. No, sir; it has been the talk of the growers that they wished they had some way they could load cars and ship them to different points so as to relieve the glut that happened at Milwaukee and Chicago, which we got in 1902 and 1903.

Mr. URION. Did it result in reaching the East?

Mr. CORBIN. Yes, sir.

Mr. URION. Did it result in additional profits, and enable them to get better prices?

Mr. CORBIN. Yes, sir.

Mr. URION. Taking all into consideration, will you state to the Commission whether you regard the refrigeration rate of the Armour Car Line as excessive?

Mr. CORBIN. From a business point of view, rather than to go back to the way it was before this, I think the rate is not exorbitant at all. I would rather pay the prices to-day and be sure of the service we get.

Next I will read from the testimony of Mr. McCarty:

Mr. MCCARTY. I have been in business there about forty years, and have been a peach shipper, and of course we had had lots of trouble shipping peaches and getting them shipped to a distance. We had to ship them locally a great deal and met with loss. Since the Armour car service went in we have had good success with our peaches. In 1902 I shipped 45 cars and made money on all of them. I shipped 7 by the Grand Trunk. I got the cars free and paid for the icing. I lost on all of them.

Commissioner PROUTY. Did you pay the full charge?

Mr. MCCARTY. Yes, sir; from $35 to $50. It paid me to do it. I shipped to Mr. Fernald, as good a man as there is in New York. He said: "Don't ship any way but in the Armour cars; I would rather pay it myself."

Next I will read from the testimony of Mr. Flood:

Mr. FLOOD. Since we have got better service from the Armour folks we are able to extend our markets. Prior to that we had to dump almost everything into the Chicago and Milwaukee markets, and during the time we had most fruit there was a congested condition. I know that since the Armours put their cars on we have had a better system and we have buyers there. Prior to that they would say, "We can not come here and buy because we can not get cars to make our markets."

Next I will read from the testimony of Mr. Loomis:

Mr. LOOMIS. My experience has been the same as the rest of them. I have been shipping twenty years. The shipments have got to be taken care of as they go through, and until Armour & Co. took care of them we did not have that service.

Mr. URION. Has the profit to the growers and shippers in your community been enhanced by the use of Armour cars, notwithstanding the refrigerator charges?

Mr. LOOMIS. It has.

Mr. URION. They have made more profit by the payment of the refrigerator charges and getting the service than they did under the old arrangement?

Mr. LOOMIS. Yes, sir; because buyers came in there, and we could not have them when we did not get the cars and service.

Mr. STEVENS. You will need more time, I imagine, to finish?

Mr. ROBBINS. Yes, sir; I have some more material here.

Mr. STEVENS. Very well, we will hear you further.

Thereupon the committee adjourned until Monday, February 6, 1905, at 10.30 o'clock a. m.

WASHINGTON, D. C., *February 7, 1905.*

The subcommittee met at 10.20 o'clock a. m.; Hon. Ferd. A. Stevens in the chair.

STATEMENT OF MR. F. J. REICHMANN, VICE-PRESIDENT AND GENERAL MANAGER STREETS WESTERN STABLE CAR LINE, CHICAGO.

Mr. REICHMANN. Mr. Chairman and gentlemen of the committee: I am vice-president and general manager and a member of the board of directors of the Streets Western Stable Car Line, which is a corporation of the State of Illinois.

Mr. STEVENS. What is the corporation and what does it do?

Mr. REICHMANN. We are chartered to build for sale and hire special stock cars for the transportation of cattle, horses, or all live animals.

Mr. STEVENS. How extensive a business do you have?

Mr. REICHMANN. We own and lease to the railroads now between 8,000 and 9,000 cars. That varies according as we dispose of cars, at times sell them outright. We manufacture these cars and sell them or lease them.

Mr. STEVENS. Just state the course of your business. For example, beginning now, the first of the year, about how does your business run during the year? In what way do you have connection with the railroads or shippers?

Mr. REICHMANN. If there is no objection, I think that I can present our position very briefly by following the outline that I have drawn here. I think I can present it more connectedly, and I will refer to my notes, although I shall not confine myself to them. If there is no objection I would like to proceed on that line.

Mr. STEVENS. Proceed in your own way to expedite matters.

Mr. REICHMANN. I come before the committee not as a lawyer to discuss the legal points that may be involved in the regulation of the so-called private car lines, but as a business man, having had twenty-five years experience in railroad matters, and which has nearly all been devoted to the special freight service of railways and in matters connected with and the management of various private car-line enterprises, to discuss the purely operating or business phases of these organizations, and to correct some misstatements that have been made, especially with regard to the private stock car lines with which I am at present connected.

I deem it important at the outset to make a clear statement to the committee of the various methods by which the railway common carriers obtain cars for the transportation of commodities. They obtain them, first, by purchasing them or building them at their own car manufacturing plants; second, by leasing them under what is known as the car-trust plan, under which the title to the cars remains with the builders or vendors until the car-trust notes issued under a contract of sale or lease have all been paid; third, they obtain cars from private owners on what is known as regular mileage (a common rate established by all railroads in a given territory for the use of private cars, the rate varying somewhat as between refrigerator cars, stock cars, and so forth), and to meet certain traffic contingencies an established rental per month, or a guarantee of a minimum earning per car per month is exacted by the car owner and allowed by the railway. All cars, regardless of how they are obtained by an individual railroad, are interchanged between railroads, and settlement is made by the operating company directly with the car owners. Now, in speaking here of cars I mean freight cars. That is not true of passenger equipment, as you gentlemen may know.

Let me cite briefly what the Interstate Commerce Commission said on this point. I will quote only the earliest decisions, which I understand have been sustained by the decisions of the Supreme Court. In the Worcester Excursion Car Company *v.* The Pennsylvania Railroad Company, in the Third Interstate Commerce Commission Report, they say that the railroad company may acquire cars by construction, by purchase, or by contract, for their use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers. In the Independent Refiners' Association of Titusville, Pennsylvania, and the Independent Refiners' Association of Oil City, Pennsylvania, *v.* The Pennsylvania Railroad Company and the Western New York and Pennsylvania Railroad Company (5 I. C. C. Rep., 415) they say:

> It is the duty of the carrier to equip its road with the means of transportation, and in the absence of exceptional conditions those means must be open impartially to all shippers of like traffic.

I do not know how much these earlier rulings may have influenced the extension and development of the private car business; but, regardless of whether they correctly express the legal status of these companies, there is no doubt they were accepted as the law, and they were certainly in line with current economic tendencies in the transportation business of the country.

The most lucid, and to my mind the most accurate, statement which has been made regarding the growth and development of the interchange of cars and the system of hiring and compensating owners for cars in this country we find in the Fifth Annual Report of the Interstate Commerce Commission, 1891, beginning at page 34, from which I will quote briefly:

> Under the turnpike theory of "tolls," the owner of the vehicle would pay to the owner of the road the sum fixed by law, or by agreement between the parties, for the privilege of passing the vehicle over the road. Then if the owner of the vehicle were himself a carrier he would make his own charges to his patrons. Since, however, the railway company has become the exclusive carrier over its line, as well as the owner of the road itself, the idea of 'tolls," in the sense of a payment to the company by the private owner of a car for the passage of the car over the road has become for the most part obsolete.

After the necessity for the exclusive control of a single company over the transportation and general operations of the railroad became finally settled, the use of other cars than its own was, during a considerable period at least, unusual. As soon, however, as the sagacity of railway management, prompted by the demands of commerce, undertook the establishment of through routes of trade and travel over connecting lines the necessity for the passage of the cars of one company over the lines of another to save the trouble and expense of breaking bulk or transferring the contents became clearly apparent.

But in the adjustment of the relations between the owner of the road over which the car was to pass and the owner of the connecting road to which the car belonged the idea of a payment of toll for the carriage of the car by the latter to the former was discarded and the idea of a hiring of the car by the former from the latter was adopted. Under the conditions of interchange of traffic and of cars between connecting lines, where the use made by each of the cars of the other or others would in the long run be nearly equal, the amount agreed to be paid for such use would not be very material. A striking of balances between the mutual accounts would bring the parties out pretty nearly even. Whether or not under the circumstances the amount agreed to be paid for the hire of cars is actually more or less than a fair compensation for their use is a comparatively unimportant question. The question, however, becomes one of great importance in connection with the use of cars belonging to private shippers in transportation over lines of railways.

In the growth and development of railway traffic it became evident that many commodities might be transported to much greater advantage in certain kinds of cars specially adapted to the character and peculiar qualities of the particular traffic than in the ordinary cars furnished by the carriers. The latter did not always respond to the demand for improved vehicles of special pattern, but frequently failed to provide them in their own equipment. Hence, by agreement between shipper and carrier, the former often undertook to provide his own cars for shipment of his particular commodities.

It will be seen from this statement of the Commission that the first railway freight cars, being an improvement over the best means of transportation prior to the advent of the railway, were ample for the satisfactory transportation of the staple commodities that were produced during the early period of railroads; and it was but natural that railway managers should have guarded jealously the carriage of commodities in their own cars only.

The transportation problem grew more complex, however, as industry became more diversified and the genius of American producers in such a vast country, with its varying climate, brought forth commodities of a more perishable and destructible nature, demanding cars adapted to the transportation of particular commodities. The railway managers were now confronted with the more intricate problems of transportation. They must either forego and relinquish the earnings that were sure to follow through this great diversion of industry or they had to take the risk of providing special cars, assuming the entire expense incident to the development of this special traffic, without any substantial guarantee that the special cars would continually be used by the producers of commodities to be transported in them. The struggle was a brief one, and it resulted in the railway managers saying to the producers of these special commodities (on the theory, no doubt, that any article of commerce is not fully produced until it is in the hands of the consumer): "You are more familiar with the kind of car best suited for the transportation of this commodity and are therefore best qualified to provide the car required. If you will do this, we will allow you a fair compensation on your additional capital invested." In effect, said to them that they must provide cars as a part of their plant. By doing this the producers were enabled to avail themselves of more extended markets and enabled to ship over the largest number of railways. This gradually led up to special com-

panies being organized to supply the smaller shippers with improved cars that would facilitate the more economical and more perfect handling of special commodities and practically placed them on the same basis as the large car-owning shippers. The improved stock car resulted from a desire on the part of shippers and handlers of live stock to eliminate the yardage expense and to reduce the shrinkage of live stock in transit to a minimum by the more humane treatment of cattle.

But perhaps a still stronger influence with the railroads was the question of limiting their liability, being unwilling to assume any greater risks than were involved in the transportation of the ordinary staple commodities. They compelled the owners of the products to assume the risk of loss and damage to these commodities while in transit in these special cars, and here, again, through the free operation of the laws of trade, independent companies offered to furnish this added protection to the smaller shippers for an additional charge.

I dwell upon this matter in its historical aspect largely because the contention has been very strongly made that originally the railways made a charge in addition to the freight rate for the transportation of these special cars; that the departure was in the nature of granting a concession amounting to a rebate to the industries that have provided themselves with these special cars. I maintain that this charge was originally made because of the determination of the railway managers in the early period of railroading to confine the transportation of commodities in their own vehicles, and was really intended as a penalty or fine upon a person presuming to furnish his own cars. Nothing is clearer than that the best results could be obtained by the shippers and railroads working in harmony to provide the most efficient car that would transport commodities at a minimum expense, damage, shrinkage, and loss; and that it was a similar improvement in transportation matters as that adopted by the railways when they agreed to interchange cars between themselves, and the operating company to compensate the owning company by allowing what they believed to be a fair return for the capital invested.

This specialization in the carrying trade, as well as many others that might be cited, such as the establishment of what is known as the Cooperative Fast Freight Line, providing for the through transportation of commodities between great distances over a number of connecting railroads under a joint traffic agreement, the establishment of special companies for handling express matter, and so forth, and which I do not think it necessary for our purpose to go into; this specialization, I say, was a mere application of the principle of the division of labor to the carrying trade of the country; and it is as firmly rooted in our commerce to-day as is the production of commodities requiring special cars for their transportation.

I would like here to illustrate that a little bit, but perhaps I had better go right ahead with what I have to say, and then the illustrations can come out in answer to questions that you gentlemen may ask me.

That these arrangements would have a strong influence upon rates, discernible to the far-seeing railway managers, was perhaps another reason why the extension of private cars should have been originally strongly opposed. For it will be readily seen that the private car was an added strength to the so-called weaker lines, enabling them to

secure a large traffic far in advance of their financial ability to provide an ample equipment. In other words, it made the traffic more competitive between carriers; and of course the converse of the proposition must also be true, that according as cars can be confined to a few hands, the greater will be the monopoly of the carrying trade. There is, however, no monopoly in the car; that rests in the railroad which is responsible for its proper use.

I know of no section of the country and of no railroad whose traffic does not vary sufficiently to call into service for brief periods additional equipment which it would not pay individual roads to provide and keep idle the larger part of every year and in some years have no use for whatever. Owing to the extreme variation in traffic conditions, the widest possible latitude should be permitted railroads for interchanging and obtaining cars, and any legislation restricting the power of the railroads in this respect will undoubtedly result in great hardship to the shipping public as well as have a disastrous effect upon prices and industry.

In this connection I would cite the live-stock traffic that is shipped into large central markets like Chicago, and so forth, from a vast and extensive territory without any means for controlling the volume of the movement. Here the need of a very elastic arrangement for obtaining cars is essential. The supply of cars at such markets is of far more importance than may appear to the casual observer. In my opinion, without the assurance of an ample car supply at these large central markets to protect the shipments of exporters and the smaller shippers who do not own cars, the markets would be very much narrowed and the purchase of cattle would be more nearly confined to industries having slaughtering facilities at these points. Is not that plain?

Mr. STEVENS. Do you mean to say that unless this special service was rendered, the small——

MR. REICHMANN. Yes, sir. I am going to enlarge on it to show you that private-car lines with their large equipment of special stock cars operating in interchange upon practically all of the railways in the United States on a regular mileage basis have a large number of cars constantly arriving at these large central markets, so that when there is an increased demand for outward-bound shipments from these markets the cars can be easily applied where most needed. The yardage expense and loss by shrinkage is so great when cattle are held over that shippers do not generally enter the markets until they are assured of a supply of cars to move them promptly.

This arrangement works automatically and gives good satisfaction. It is generally conceded by the railroads that they need the private stock cars for the proper handling of the live-stock traffic. In this connection, I desire to refer to abuses complained of by the Interstate Commerce Commission in its Seventeenth Annual Report for 1903. The report reads, at page 24:

> The average mileage of through stock trains upon the principal carrying lines to the East exceeds, it is said, 100 miles per car per day, yielding to the owner of such cars a return of over 60 cents per car per day. This return is three times that allowed for the exchange of railroad cars, most of which cost more than the average value of private stock cars. As much as 85 cents per day, it is asserted, has been received for several consecutive months within the past year by the owners of private stock cars employed in through runs as above stated. To insure the use of these stock cars by leading shippers, who are often prominent packers, it is charged to have been the practice of the concerns owning such cars to divide with the shippers the mileage

received from the railroad companies, a practice which operated to the same effect as the payment of rebates to such shippers, thus placing their smaller competitors at an unfair disadvantage. Such unjust discriminations would not be possible if the car owners were restricted to an allowance which would give them only a fair return upon their investment.

Now, since we are practically the largest private stock-car lines, having probably the best arrangements for handling and interchanging our cars, making it possible to release them where, in our judgment, it would improve the transportation in other directions, and we have got perhaps 60 per cent—I will go further than that, possibly 75 per cent—of the live-stock traffic from Chicago markets into Eastern States points, largely Atlantic seaboard points, and a large part of which of course, is for export, it seems to me, Mr. Chairman, that any public body should not attack a corporation of a State, even though its jurisdiction were positively established, without having the facts to warrant it. The statement of the Commission is taken almost bodily from reports made by Mr. J. W. Midgley, a so-called expert, who testified at the October hearing in Chicago that his entire experience had been in traffic matters, and that he had had very little experience as a car man when he took hold of the car proposition—I mean the railroad-car proposition very largely—at the request of certain railroad men two or three years ago.

I want to say that this statement of the Commission is a purely imaginary statement that has no doubt been imposed upon the honorable Commission and which I desire to disprove by submitting a certified statement of the number of cars and the average earnings per car of the Street's Western Stable Car Line in the eastern territory and for the period referred to. The Commission or their informant failed absolutely to recognize the fact, which should have been familiar to anyone undertaking to inform the Commission upon the subject, that the cars of private companies, so far as the live-stock traffic is concerned, are resorted to very largely when there is serious congestion of traffic on the roads in the eastern territory, due to various causes, among which the most striking are snow blockades or severe winter weather, when empty cars can not be returned promptly and the private companies are compelled to send a very much larger number of cars into the territory than would be needed if cars were moved freely. The return movement of these cars is always very slow.

Mr. STEVENS. You get paid for both ways, do you not?

Mr. REICHMANN. Yes, sir. We have absolutely nothing to do with the traffic. We hire the cars, and they pay us mileage on each car.

Mr. STEVENS. It does not make any difference to you how slow they are in returning them, then?

Mr. REICHMANN. Yes, sir; certainly. We are paid on mileage, and we are just the same as anybody else traveling on mileage. If he could travel all the time his earnings would of course be reduced by delay.

Mr. ADAMSON. You have nothing to do with the transportation of the car either way?

Mr. REICHMANN. No, sir.

Mr. ADAMSON. Or the freight?

Mr. REICHMANN. I will come to that in a moment. I desire to submit to the committee a statement of the average number of Street's Western Stable Car Line cars, Hicks stock cars, and Canda Cattle

Company cars upon the railroads engaged in interstate traffic from Western States points to Eastern and Atlantic States points, covering all cars engaged in said long-haul traffic, the total gross earnings of these cars, as reported by the railroads operating the same, and the average earnings per car per month. This statement is signed and sworn to by Joseph J. Schneider, the accountant of Street's Western Stable Car Line.

The table referred to by Mr. Reichmann is here inserted in the record as follows:

Statement of the average number of Street's Western Stable Car Line cars, Hicks Stock cars, and Canda Cattle Company cars upon the railroads engaged in interstate traffic from Western States points to Eastern and Atlantic States points, covering all cars engaged in said long-haul traffic, the total gross earnings of these cars as reported by the railroads operating the same, and the average earnings per car per month.

Month.	Total gross earnings.	Average number of cars.	Average earnings per car.
1902.			
March	$10,488.17	1,301	$8.06
April	6,464.58	997	6.50
May	7,265.04	784	9.27
June	7,975.69	773	10.32
July	6,939.14	764	9.08
August	7,674.65	751	10.32
September	7,365.06	853	8.64
October	10,263.10	883	11.62
November	10,859.31	1,187	9.14
December	14,547.13	1,492	9.75
1903.			
January	17,920.39	1,901	9.42
February	19,861.07	2,255	8.80
March	19,960.62	2,132	9.36
April	13,484.27	1,647	8.19
May	10,582.02	1,352	8.00
June	11,096.33	1,187	9.35
July	8,800.08	1,264	6.97
August	10,880.68	1,247	8.73
September	10,218.06	1,325	7.71
October	12,379.07	1,314	9.42
November	13,010.33	1,347	9.68
December	13,990.35	1,539	9.09
1904.			
January	20,737.49	2,042	10.16
February	22,647.62	2,628	8.62
March	24,630.04	2,586	9.52
April	20,478.04	2,101	9.75
May	15,962.75	1,751	9.11
June	11,809.04	1,485	7.95
July	11,771.34	1,265	9.31

STATE OF ILLINOIS, *County of Cook, ss:*

Joseph J. Schneider, being first duly sworn, upon his oath deposes and says that he is the accountant in charge of the car records of Street's Western Stable Car Line, and has served in that capacity for more than two years continuously last past; that he has compiled the above statement, and that the same is true and correct in every particular.

JOSEPH J. SCHNEIDER.

Subscribed and sworn to before me by said Joseph J. Schneider, this 18th day of January, A. D. 1905.

KATE L. BLADE, *Notary.*

Mr. REICHMANN. This statement as you see commenced with March, 1902, and it ends in July, 1904. That was as late a date as our records were complete enough to give us the information, and besides, it covers fully the period which the Interstate Commerce Commission refer

to in their report. I will start with March, 1902, when we had 1,301 cars in the eastern territory, and the average earnings per car were $8.06. There are also shown here the actual amounts paid, and I will say that it appears that for any one month of our total earnings in the eastern territory the maximum is in March, 1904, when it was $24,630.04 on 2,586 cars. When I speak of cars in this table that means cars that have been on the road a whole month. This statement is based on 30 car days. That is a little technical, perhaps, but I think it is generally understood what that means.

In January, 1904, the number of cars was 2,042 and the average earnings were $10.16. Then we jumped the next month to 2,628 cars, and our average earnings were only $8.62. We put in nearly 600 cars there in that month. We may within a week have to put in a thousand additional cars at times.

(Mr. Reichmann here read aloud the entire table above referred to.)

Does not that prove that this arrangement works perfectly automatically? We take them out and put them in as is necessary, and our earnings stay about the same, and the railroads handle the cars in about the same way. How does that compare with the testimony of the gentlemen who testified before the Senate committee, I think, the other day, that the earnings on these cars were as high as $12 a day? This table is certified to and sworn to before a notary.

Mr. ADAMSON. I looked at the figures as you gave those details, and I would like to know whether it is true that you do not average over $12 a day.

Mr. REICHMANN. I will answer that our earnings on the cars in other territories are considerably below the earnings in the eastern territory. I will admit that those are the best earnings which we have.

Mr. ADAMSON. That is, in the Atlantic division?

Mr. REICHMANN. Yes; between Chicago and the Atlantic seaboard. It is the best and quickest route that we have, and it is where the cars come right back to our center, and we can shift them to other places. Do you see what that means? It is a well-recognized principle of car distribution that no railroad manager would diminish the equipment on his own line to the extent of threatening his own local service. Take a great railroad like the Pennsylvania Railroad. They have not got to serve the shippers at Chicago only. Think of the vast territory that they must serve.

I desire to correct the report in still another respect. It is not true, as stated by the Commission, that the cars of the private stock-car companies are largely used by the prominent packers. It is safe to say that not 5 per cent of such cars are used by the packers. They are used for shipments purchased in competition with the packers.

Mr. MANN. These packers do not ship live stock, do they?

Mr. REICHMANN. They do; yes, sir. They do ship some live stock when they buy more than their plant will handle, and there is, of course, a certain amount of fresh meat that is consumed, as you know. Some people do not like cold-storage meat, and they do ship more or less live stock. They to-day ship hogs—largely, however, to Boston and New England. That is a matter that I would rather the people in that line of business would handle before the committee, because they will do so more correctly, no doubt, than if I should be permitted to draw on my imagination and talk to you about the packers' business. I want to talk about the things that I have the facts on.

Mr. MANN. Do the packers ship the bulk of the live stock from Chicago east in your cars?

Mr. REICHMANN. I have stated that they do not ship 5 per cent of it in our cars. Some of the packers—for instance, the Swift Company—have their own live-stock cars, and especially the hog cars. They have a good many of them. They would go to a railroad agent and order a car the same as any other shipper, and the railroad company might furnish them our car or one of their own cars. It would depend entirely upon what they had available. Does that answer your question?

Mr. MANN. Yes, sir.

Mr. REICHMANN. I desire to correct the report of the Interstate Commerce Commission in still another respect. It is not true as stated by the Commission that, as a rule, the common stock cars built by railroads cost more than the special stock cars of the private stock car companies. The latter cost more and are preferred by shippers because cattle are better housed in them and the shrinkage and loss is less than in a common car, where cattle can not be fed, watered, and cared for as they can be in the special stock cars. It also costs much more to maintain these special cars with feeding and watering devices than it does a common stock car. When I speak of shippers preferring them, I mean in long-haul traffic. We all know, when we want to travel long distances, that the Pullman car is a good thing. The charges for our cars are confined, however, absolutely to the rental paid us by the railroads, and we get nothing whatever from the shippers. In this connection permit me to refer to the cost of repairing freight cars as reported by some railroads for the year 1904, viz:

	Per car per year.
Atchison, Topeka and Santa Fe Railroad	$93
Union Pacific Railway Company	70
St. Louis and Southwestern Railway	42
Buffalo and Susquehanna Railroad	45

Allowing for the extreme variations due to different methods of bookkeeping, Mr. J. W. Midgley, in his "Car Service Reform, 1902," establishes $45 per car per year as the cost of repairs to freight cars, based on the reports of over thirty railroad companies. The Master Car Builders' Association have established the fact that the depreciation is 6 per cent per annum. Figuring now 5 per cent as the returns on our cars, costing about $700 each, the account would stand as follows: Repairs for one year, one car, $45; depreciation, one year, at 6 per cent, $42; returns on investment per year 5 per cent, $35; making a total sum of $122 per car per year that we must earn to realize 5 per cent on our investment; and we have not been able to do it. The special stock cars cost somewhat more to maintain, on account of the feeding and watering devices, than this figure.

Our capitalization is as follows:

Common stock outstanding	$3,834,700
Preferred stock outstanding	776,900
First-mortgage bonds, January 1, 1905	164,000
Car lease warrants, January 1, 1905	1,759,147
Total	6,534,747

Our preferred stock has paid 7 per cent, and our common stockholders have during intervals of several years received no dividend;

but for past few years they have received 2 per cent per annum. Our stock is owned by the public generally, and we have between eight and nine thousand cars.

I wanted to make that statement so as to connect the two.

Mr. MANN. Your stock is listed on the stock exchange?

Mr. REICHMANN. Yes, sir; it is.

Mr. MANN. In Chicago?

Mr. REICHMANN. Yes.

Mr. MANN. What is it quoted at?

Mr. REICHMANN. We pay 2 per cent on our common stock and have done so for several years. Some people have pretty good confidence in the present management of the company, and they have been paying as high as $28 and $29 for small lots, bought in a small way, or even as high as $30 and $31 for the common stock.

Mr. MANN. That is $100 shares?

Mr. REICHMANN. One hundred dollar shares; yes, sir. Our preferred stock is selling at about par. I might explain further that an important move of our company in April, 1902, was to take over the Hicks and Canda cars, that I referred to in the statement of earnings, from the bondholders, who were left with that property on their hands.

Mr. MANN. You control the Hicks car line now, do you?

Mr. REICHMANN. Yes, sir. We issued these warrants in payment of these cars, which are shown at about $2,000,000 in the statement.

Mr. ADAMSON. How about those who manage the companies?

Mr. REICHMANN. They have to pay me enough to live, Judge.

Mr. ADAMSON. You seem in pretty good condition.

Mr. REICHMANN. I am in as hard a fix as I was before Judge Hawes in Chicago—you know him, Mr. Mann—once when I asked him for a long extension of time from jury service the judge said: "Why, Mr. Riechmann, you might be dead before that time." I said, "Oh, there is not the slightest danger, your honor." He took a look at me, and had a good laugh.

I desire to apply the above statement more particularly to the business of the company with which I am connected, but which I am thoroughly satisfied is a fair statement of the average conditions prevailing with all of the private stock car lines. In speaking also more particularly for the Street's Western Stable Car Line, I wish to emphasize the fact that our company is chartered under the laws of the State of Illinois for the purpose of building for sale and hire these special stock cars. Our cars are turned over direct to the railroads, are operated by the latter and we collect no revenue from the shipper, nor do we make any addition to the rental we receive from the railroads. We control no traffic, provide no loading for the cars, nor do we route them. Our relation to the railroads is that of an equipment or car-leasing company.

Mr. STEVENS. You do not provide for the feeding of the cattle anywhere?

Mr. REICHMANN. May I just finish here with this statement, and then I will answer that?

Mr. STEVENS. I beg your pardon.

Mr. REICHMANN. Railroads sometimes pay or guarantee us a minimum car rental per month when traffic conditions on certain lines will not warrant us in turning cars over to them on regular mileage.

Now, in regard to the feeding and watering of cattle, I am glad that you asked that question, because I think it has great bearing on this icing charge. I have begged of several of the committees not to pass any new regulations that would compel us to ice our stock cars, because I did not want any such trouble. I do not want the house pulled down on our heads like that. Shippers, so far as the feeding and watering is concerned, recognize that that is not a facility of transportation. They have always recognized that. The same principle exactly is involved in the icing proposition; they buy their hay and make arrangements for their water, if they want any. The Union Stock Yards Company at Chicago, or other stock yards, sell to their shippers at different points hay just as they sell to their men in charge of the cattle lunches, or anything else.

Mr. MANN. Is it not the duty of a railroad company to provide a stock yard wherein the cattle can be fed and watered?

Mr. REICHMANN. The only thing I know about that is that you have a Federal statue, I believe, which requires stock to be unloaded in transit every twenty-eight hours, except when in cars with hayracks and water troughs.

Mr. MANN. Yes.

Mr. ADAMSON. Am I to understand from that statement that you mean to say that you do feed the cattle and water them in transit?

Mr. REICHMANN. I mean to say that we do not. The shipper buys his hay as his men who are with the cattle in the same train buy their lunches.

Mr. ADAMSON. They do not buy them from you?

Mr. REICHMANN. They buy them from anybody.

Mr. ADAMSON. I want to know whether you are engaged in selling it?

Mr. MANN. Do you sell any?

Mr. REICHMANN. Yes, sir; we do, in Chicago, at our car shops. That comes about in this way: We do not make a business of it, and would rather not do it. We do not make anything on it. Take the initial trip of the cars out of our yards. Of course we have a certain number of cars coming in for light and heavy repairs and for rebuilding, but our average car capacity per day, of new and repaired cars turned out, is about 50 cars per day. Now, as the cars leave our own yards, the shipper may want them hayed and bedded before sending them for loading to the stock yards. In that case we put the hay and bedding in the cars. We keep shavings and sand and hay for that purpose, and we make the regular charge against the railroad, who put the charge in the waybill against the traffic.

Mr. ADAMSON. That is for the bedding of the animals?

Mr. REICHMANN. Bedding and haying, and so on.

Mr. ADAMSON. Does that include the feeding?

Mr. REICHMANN. The hay for the feeding.

Mr. ADAMSON. The haying for the feeding?

Mr. REICHMANN. Yes; the hay that they eat.

Mr. ADAMSON. Do you furnish anything else that they eat besides hay?

Mr. REICHMANN. Not unless we get some new statute compelling us to do something. We have to disinfect the cars pretty thoroughly, and we have to do a good deal, so that our returns are being curtailed considerably.

Mr. ADAMSON. Whether the necessity is derived from statute, or custom, or otherwise, I want to know just what you do in transit with these cars as to caring for, feeding, or watering the cattle?

Mr. REICHMANN. I think I see what the judge is getting at, and I want to clear his mind, if I can, before leaving this. The Pennsylvania Railroad may order from us 10 cars for a shipment of cattle to Philadelphia, we will say, for export. That is their purpose.

Mr. ADAMSON. I do not care what form you put it in.

Mr. REICHMANN. We will say that is their purpose. We know nothing about that, only they order the cars from us. They order the cars from us hayed and bedded, and we put the hay and the bedding in the cars and turn them over to the Pennsylvania Railroad, and we charge the Pennsylvania Railroad for that service.

Mr. ADAMSON. Knowing that they charge their patron for it?

Mr. REICHMANN. We do not care anything about that. We never see the bills and have nothing to do with the traffic, and we do not see the shipper, and do not know him, but we know the railroad.

Mr. MANN. Do you water the cattle and give them hay in transit?

Mr. REICHMANN. No, sir.

Mr. MANN. Then that is not in transit?

Mr. REICHMANN. That is admitted, is it?

Mr. MANN. Yes, sir.

Mr. REICHMANN. Then if that is admitted I will answer that we do not feed and hay in transit.

Mr. RYAN. The shipper sends his men along to feed and water the cattle wherever they think it is necessary to do it?

Mr. REICHMANN. Yes, sir. What I want to make clear is that they recognize that the care of stock is something in addition to the transportation. It has been recognized by the shippers of cattle as an additional facility or function, or whatever you have a mind to call it. I am not a lawyer, but I am trying simply to make a clear statement.

Mr. ADAMSON. You are a pretty good witness.

Mr. REICHMANN. A pretty clear statement is what I am trying to make. I have told you that the cars that leave our yards are sometimes hayed and bedded, and they are not hayed and bedded by us after they leave the yard.

Mr. RYAN. By you?

Mr. REICHMANN. By us. I do not know that they are anywhere, so far as that is concerned. Of course the cattle eat this hay.

Mr. MANN. Coming into Chicago the cattle sometimes are fed?

Mr. REICHMANN. That is a western railroad proposition altogether; but, as I say, you know what terrible trouble they have had about this stock question—about sending men in transit with the stock. The railroads, I think, even insisted that their liability did not compel them to pass a man in charge with the stock. I want to make that clear to the committee—that as a practical transportation question the railroads have taken one position, and now certain shippers are taking another.

Mr. ADAMSON. Now, you are competent to make nice arguments and statements, and I want you to come right back and answer my question and one or two others. I just want to know, without any regard to your statutes or your contracts or your customs or anything else, what it is that you usually do. In coming east you say that you place in the car, not outside of Chicago, the hay and bedding for the entire

trip, as you estimate it. Is that right? You intend it to be enough for the entire trip?

Mr. REICHMANN. I will have to answer that question, no. And yet that would hardly be a fair answer.

Mr. ADAMSON. I would just like to know, when you undertake to put hay and bedding in the car——

Mr. REICHMANN. When you tie me down to a strict answer, I would say, no.

Mr. ADAMSON. When you undertake to hay and bed a car, to what extent do you do it?

Mr. REICHMANN. To the extent that we are asked to do so by the railroad.

Mr. ADAMSON. I want to know to what extent that is.

Mr. REICHMANN. You must ask that of the railroads or the shippers.

Mr. ADAMSON. I am asking you. They might be as cautious as you are.

Mr. REICHMANN. I am not cautious. I am simply anxious not to be misunderstood.

Mr. ADAMSON. When you undertake to prepare a car at Chicago, which you say you do exclusively in Chicago, with hay and bedding, I suppose it is the common intent on the part of the railroad which orders it that you should supply sufficient for the entire journey in the car; is not that true?

Mr. REICHMANN. I am just trying to think of something that will answer you clearly. So far as we are concerned, we have not any intention about it.

Mr. ADAMSON. If you charge for it, you ought to intend to give them that which they pay for.

Mr. REICHMANN. We charge for it. They order it of us, just as you would step into a store and order a suit of clothes or a desk or a lunch or anything else.

Mr. ADAMSON. You would understand if I got a suit of clothes I would want it big enough for me, would you not?

Mr. REICHMANN. All right; but as to whether the clothes would be big enough, or whether they would fit you, I would have to measure you.

Mr. ADAMSON. You mean to say that the railroad company in ordering a car hayed and bedded does not give you any idea——

Mr. REICHMANN. I say this, that what they want they tell us absolutely and specifically.

Mr. ADAMSON. That is, you intend to do that thing?

Mr. REICHMANN. But I am not going to commit myself as to what their purpose is in ordering that hay and bedding.

Mr. ADAMSON. Do they say that they want a car hayed and bedded to go to New York, or what do they say?

Mr. REICHMANN. They carry out the instructions of the shipper.

Mr. ADAMSON. When they order a car from you hayed and bedded, in what shape do they put that instruction to you?

Mr. REICHMANN. They say "We want 10 stock cars, and want them bedded." That might be one order.

Mr. ADAMSON. Now, when they want them hayed, what will they say?

Mr. REICHMANN. "We want 10 stock cars, and we want them hayed and bedded."

Mr. ADAMSON. Do they not tell you for what purpose or how far they want them hayed? Do you put as much in one car as in another?

Mr. REICHMANN. I may be at fault in this, that I do not convey the idea clearly enough, but when the car is hayed it is usually with a certain quantity; the usual number of bales of hay.

Mr. ADAMSON. Regardless of the distance it is to go?

Mr. REICHMANN. Yes, sir.

Mr. ADAMSON. How many bales of hay?

Mr. REICHMANN. I could not answer that specifically. Of course our racks I should not think would hold over 4 or 5 bales of hay. I know that at the Niagara frontier there has been quite a little difficulty at times because the cattle would have destroyed or used up the hay that was in the cars. I think it is true largely of cattle passing through Canada, so that I assume it is their restrictions that make the trouble. They have ordered these men to buy extra hay.

Mr. ADAMSON. Then this is not enough hay to go through on a long journey?

Mr. REICHMANN. I think the shipper's object is to hay the car for a long journey. I might explain further that there are a great many cars that are not hayed and bedded at Chicago.

Mr. ADAMSON. I know; but I am talking about those that you hay and bed. Do you mean to go on record as saying that your company gets an order and fills it to hay and bed and you fill the order without any reference to how far the car is going or what State it is going to?

Mr. REICHMANN. That is true. We supply a uniform amount to each car. The Union Stock Yards' charge is $3 for that same service, and we all charge alike. That has been the uniform charge for twenty-five years, I think.

Mr. ADAMSON. And they all pursue that practice and supply hay and bedding without any knowledge of where they are to go or how far the cars are to go?

Mr. REICHMANN. Except such knowledge as the shipper may impart.

Mr. ADAMSON. Do you get the knowledge?

Mr. REICHMANN. No, sir; we do not.

Mr. ADAMSON. Do you do it without any knowledge on your part as to how far the car is desired to go, or where it is intended to go?

Mr. REICHMANN. Yes, sir.

Mr. ADAMSON. And you put a uniform quantity of hay and bedding in there, regardless of the distance or route?

Mr. REICHMANN. Yes, sir.

Mr. ADAMSON. Or the number of cattle to be put in there?

Mr. REICHMANN. Yes, sir. We do not know that it is going to be used for cattle, even. Our assumption is that it is to be used for cattle, but they could use a car for something else.

Mr. RYAN. As a matter of fact, your responsibility ceases when you turn the cars over?

Mr. REICHMANN. Yes, sir. We are car building, and we turn the cars over to the railroads. When they ask for special service, such as this haying, and we can furnish it, we do it; but we carry out their orders absolutely.

Mr. ADAMSON. I am trying to find out whether there is anything you do and agree to do, or any responsibility that you assume as to that car or its contents anywhere in transit through the different States.

Mr. REICHMANN. Can I proceed with my statement, and I will answer that, I think, absolutely?

Mr. ADAMSON. I would like to get it answered directly. You are a good hand to make arguments, but when I ask you a question I would like to get an answer to it.

Mr. REICHMANN. I think I have already covered it.

Mr. ADAMSON. If you are not a lawyer, you missed your calling. You ought to have been.

Mr. REICHMANN. Thank you; thank you very much, Judge. I will get even with you for that.

Mr. ADAMSON. I do not know; if you can think of anything worse to say to me.

Mr. REICHMANN. I am speaking more particularly for the Street Western Car Lines, and I wish to emphasize that our company is chartered under the laws of the State of Illinois for the purpose of building for sale and hire these special stock cars. Our cars are turned over direct to the railroads, are operated by the latter, and we collect no revenue from the shipper, nor do we make any charge to the shipper for the use of the car or for any service in addition to the rental we receive from the railroads. I do not see how I could answer it any nearer than that. We control no traffic, provide no loading for the cars, nor do we route them. Our relation to the railroads is that of an equipment or car-leasing company. Railroads sometimes pay or guarantee us a minimum car rental per month when traffic conditions on certain lines will not warrant us in turning cars over to them on regular mileage.

Mr. ADAMSON. You made that part of your statement before. And I thought that was such a pretty place, if you had just said that you neither fed or watered those cattle nor provided them with anything or accepted any responsibility for them en route. I heard you when you made that part of your statement a moment ago, but I did not hear you say what that was such a pretty place for you to have said.

Mr. REICHMANN. If I am not clear, I mean to be. In some cases, also, shippers requiring cars for special purposes will obtain them from us on a fixed or guaranteed rental, but this is a comparatively small part of our business. In addition to the conditions which I have recited, existing in the large central markets, cattle must frequently be moved from certain sections of the country on very short notice under conditions that can not be foreseen and provided for in advance. Then, too, there are certain movements of such short duration that it does not pay the railroads to supply their own cars. Hence the necessity for maintaining a large free equipment upon which the various railroads can draw just according to their needs. As already stated, if each railroad provided stock cars for its maximum requirements, a large part of them would be idle most of the time, which would add very materially to the total transportation expense.

During very extended periods, also, when general business is good, railroads place a good many of their common stock cars into dead-freight loading, such as lumber, coal, coke, brick, ties, and construction materials, and call on us for cars to protect their live stock. Take so large and well equipped a system as the Santa Fe, for instance, they frequently call on us for from 500 to 1,500 cars during such periods. That is the result, not of a condition in live-stock traffic, but

is due to the fact that their dead-freight loading is so heavy that they have got to put their own stock cars into dead freight more extensively. Last fall when the corn movement was at its height they slatted a lot of their stock cars and put them in this traffic, while we furnished them with what additional cars they required for their stock movement. In this way the railroads all over the country recognize that we are a great help to them.

As conditions vary so extensively in different sections of the country we could not conduct our business on a fixed rate, and this is a matter on which we must have considerable latitude. The necessity for maintaining a large stock-car equipment on which the railroads can draw is, I think, emphasized by the fact that the stock raisers of Texas were instrumental in having a law placed upon the statute books of that State providing penalties against the railroads for failure to supply a stock car within a certain time after the shipper filed a requisition with their agent. Railroad officials in charge of distribution of equipment in this section have stated to the Interstate Commerce Commission at their various hearings on matters pertaining to the live-stock traffic that they would not be able to get along without the private stock-car lines.

And in justice to the Interstate Commerce Commission I wish to say that in some of their subsequent reports—and I regret I can not state the authority—they said, in sizing up all they say about the private stock-car evils, giving you the substance, and not quoting verbatim: "If, as seems to be true, these special cars take care of certain unusual conditions, the private-car evil may not be so much of an evil after all."

Mr. ADAMSON. I do not want to interrupt you or disturb your course, but I think you want to effect the most good you can in your hearing, and you will pardon me if I say that so far as I am concerned I fully recognize that there is great good in these cars and great use for them, and I do not know that you have ever done a thing in the world that I would blame you for and would not do myself, but there are two points that I have been trying to drive at. The first is, do not your private contracts perpetuate the same condition that you say enforces their use; and in the second place, the questions that I have been asking have been directed to finding out whether you do anything which would give us the power and jurisdiction as Congressmen to regulate you under the provision of the Constitution to regulate commerce between the States, and therefore I have been asking you what you aimed to do and did in connection with the property in transit between the States. I have not asked you about those exclusive contracts, but I would like to hear you talk about them before you quit. But I would like to ask you whether or not the necessity which you say exists for these private cars tends to prevent any competition ever arising to destroy that condition?

Mr. REICHMANN. As to the basis of compensation, the private stock car lines receive for the use of their cars in general traffic the established rate of mileage which was in effect for the interchange of similar equipment between railroads prior to the establishment of a per diem rate and penalty as a basis for settling car balances between railroads a few years ago. This system of per diem and penalty was resorted to by the railroads not with a view of fixing a more just or equable rate of compensation to railroad-car owners but for the sole purpose of securing a more prompt return of the railroad car to its owner, as a

per diem rate acts in the nature of a penalty upon the operating company for holding the car out of use when away from home. It is a purely reciprocal arrangement between the railroads and can be safely used as a basis for adjusting balances, for the reason that a railroad owning 10,000 cars, requiring that number for its normal traffic, when it has 3,000 of its own cars away from home, will at the same time have 3,000 foreign cars on its line, which results in a perfect adjustment of its car balances. To establish by legislation the same basis of settlement for private cars as is at present in force for the settlement of railroad cars would absolutely destroy the business of the private stock car companies and would be an act of great injustice.

And, gentleman, to explain that is the main object that I am here for. I do not know whether Congress has the authority to fix our rates, or what it has. Those are legal questions and I am not a lawyer. Sometimes I wish that had been one. Perhaps I could answer your questions better, Mr. Committeeman, if I had been one, but so far I have escaped it.

Mr. ADAMSON. You can escape allowing anybody to handle you now?

Mr. REICHMANN. Certainly such radical legislation should not be attempted until thoroughly reliable data are at hand to enable a competent tribunal to determine what is a fair and reasonable rate of compensation to car owners. As already stated, great latitude must be permitted railroads in securing equipment, and that this should be subject to reasonable control to prevent discrimination may perhaps be true. The question of the direction of this control is, however, not so easily determined.

Mr. Chairman, I want to say this, that however my testimony here may impress any member of this committee, I come here with no other purpose—practically on the invitation of the President in his message—but to discuss with you these important questions, which I am quite sure you are trying to handle in the interests of the great American people. I want to be just as frank with you as I can be. The question of this control, however, is not so easily determined. It will be, I think, conceded that if control is to extend along the line of making car companies subject to the provisions of the interstate-commerce act, then this same control must be extended to other industries, or other facilities which may be provided by industries in the natural development of commerce. How far this would extend it is at present impossible to realize. I am satisfied it would lead to great complications, and at best be of doubtful value in the correction of abuse.

In the case of the private cars, I desire to point out the fact that a private-car company does not operate its cars. The railroad common carrier is always the operating company, regardless of the owner of the car. The traffic is always under the control of the railroad regardless of the car or its owner. Cars can only be used by a railroad company having the power necessary for their transportation.

Now, just to emphasize that, I would like to show how clearly that is brought out in the Pere Marquette exclusive contract, I want to read a clause of that contract:

1. That the car line agrees to furnish to the Pere Marquette at some point or points on the Pere Marquette lines, properly constructed fruit cars lettered "Fruit Grower's Express," "Kansas City Fruit Express," or "Continental Fruit Express," sufficient in number and furnished in such order as to carry with reasonable dispatch the fruit which the Pere Marquette shall be tendered by shippers during the life of this contract, etc.

2. *The Pere Marquette* agrees and obligates itself to use the car line's equipment, &c.

I wanted to point out that that was a well-recognized principle of transportation.

Private car companies or shippers do not use cars; it is the railway company that uses them for the transportation of commodities tendered them as common carriers. A car company, as such, can not make a contract with shippers for the transportation of commodities, excepting as it may have a contract with the railroad for the transportation of commodities loaded in its cars, when it seems to me its status must be defined as a part of the railroad; and to the extent that such car companies have performed any service connected with the transportation of property, it is only a reasonable conclusion that they were acting as agent or a part of the railway common carrier for whom they were performing the service.

That may not be legal at all, but it looks to me like good, ordinary, common sense.

Mr. ADAMSON. The agent who participates in anything is particeps criminis if there is anything wrong with it.

Mr. REICHMANN. I am thoroughly convinced that all of the different features of the business of what might be termed adjuncts to the transportation business of the country can best be controlled through the railway common carrier filing with the Interstate Commerce Commission or a similar body all contracts that it may have with such companies or semi-industrial railroad organizations. So far as the private car lines are concerned the railroads could, I think, without materially increasing their burdens, furnish statements showing the average number of cars of each company which they had on their line and the rentals paid such companies for the use of the same for such period as might be deemed proper, as well as the rate of mileage paid.

Now, Mr. Chairman, if I have a little more time I would like to go into some of the statements that were made here. I will not assume to read anything prepared. I will assume merely to cover some of the points.

Mr. STEVENS. Cover them as briefly as you can. We would like to have you finish this morning if possible.

Mr. REICHMANN. What I wanted to make plain is that the position has been taken here that the railroads should provide every facility; that they should be forced by legislation to provide every facility. I wanted to point out, if I could, that through the natural operation of the laws of trade, the railroads have been gradually but surely assuming certain added responsibilities. They have undertaken, as was stated the other day, the refrigeration of certain commodities. The Official Classification has for years provided a rate on certain products that included refrigeration. The western classification has not been quite as extensive in some respects, and it has been more so in others. I am not in sympathy, however, with this enforcement, and I believe it wholly impracticable to enforce by legislation that they must provide every facility asked for, no matter what the conditions may be. It may be perfectly practicable for railroad companies to undertake these special facilities in some territory, on certain kinds of traffic under certain circumstances, but it may be utterly impossible for them to do so under other circumstances.

Some of the same gentlemen who have appeared here insisting so earnestly that the railroads be compelled to provide every facility according to their own ideas, made just the same loud protests that

they are making now when the western railroads provided, under the western classification, one rate on dairy products in less than car loads, and another rate in car loads—a lower rate—and asked the shipper to assume the icing expense. Why, I have personally handled any number of claims from Boston with language in them that I dare say made the dome of the old Massachusetts statehouse rattle at the time the letters were written. There was such a determination upon this question that it would be necessary to have the actual documents to give you any conception of it. What are they trying to do here now? That is what they are protesting against now, so far as I am able to learn from evidence before the committee.

Outside of the general charge that Armour & Co. are going to get a monopoly of the food products of this country they are supported by nothing but a fear that they may some time be driven out of business, which shows a most wonderful lack of confidence in American institutions. I repeat that their protests are against the railroads being permitted to make the best arrangement which the commercial situation warrants for the necessary protection and insurance of the highly perishable commodities that can not be successfully handled by the ordinary means of transportation. They would have you believe that because the railroads have undertaken this protection in a small degree, that therefore there should be no limit to their undertakings in this direction.

Because of their lack of knowledge of the railroad business, viewing it as they must from their limited experience as shippers, being unable, however honest they may be, to make an accurate survey and place a true value upon all of the elements of this problem, they erroneously assume that they or rather the producers would escape the expense of this added service if in some way the private car line could be gotten out of the way. In this they would of course be greatly deceived, for, as you will realize, this expense must be paid by some one. I maintain that these charges that have been exacted since the Elkins law became effective can not be compared with the charges prior to that time, for the reason that concessions in icing charges were used as a basis for influencing shipments. This may not be known to members of the Commission Merchants' League, as usually the shippers made their own arrangements with the refrigerator lines. These gentlemen make no distinction between different territories where wholly different conditions prevail. Take, for instance, Minnesota, especially in the vicinity of Duluth, the place of business of the gentleman who has enlightened you upon the question of refrigeration, where nature does the work for him a large part of the year, a community that produces no highly perishable products; in this territory it is quite possible for the railroads to undertake the task, because here nature has limited it to an infinitesimal portion.

Here the wheat and staple products can be held and are held, awaiting sufficient equipment to move them without great loss or hardship.

But, nevertheless, the railroads of Minnesota and the Northwest have had to frequently resort to the special stock cars, and notwithstanding the stability of that traffic in that section and the railroads being reasonably well supplied with cars they could not always move the cattle out promptly without help from the private stock car lines, and these conditions have prevailed for a great many years.

I want briefly to call attention to another matter. Let me call your attention first to the fact that the railroads in such territory—that is, in the territory producing highly perishable commodities—do not always have the staple commodities to move over their rails, as a guarantee of revenue, that some of these northwestern and western roads have. They must rely upon these fruits, berries, and so forth for the revenue to maintain their railroads. They must not only provide the best possible facilities but they must do so at a minimum of expense, for, as is well known, there is greater uncertainty as to crops of this nature than as to wheat, corn, and cattle.

Is it not natural then that such roads should make the necessary arrangement for cars with companies that can give shippers the added assurance of the safe transportation of their commodities?

When I was managing the refrigerator car lines operating over the Grank Trunk system, we tried to handle the peaches in connection with the dairy-traffic service, but we could not do it satisfactorily; we could not spare cars from the dairy traffic. I think the Michigan Central was in the same predicament. Sometimes when the peach traffic looked most promising and we put our cars into Michigan for peaches we would try to obtain cars for the dairy traffic from the western roads originating it, but we found we could not hold the business that way and often lost both peaches and dairy freight. The scheme which has been proposed, for the originating line to obtain cars from connections that can share in the haul, has not only been tried, but has been in actual use all through my railroad experience. It works all right for commodities that can be held awaiting cars and where the destination of the traffic is known. But the highly perishable freight and live stock can not be handled in that way. Cars must be at the originating points for prospective loading to any markets, and for this purpose a car is needed that can travel over any connection. Take the grape business, for instance. The grapes are actually loaded in cars before they are sold or their destination is known. The same is true, in a measure, of potatoes and other commodities.

I am trying to avoid being technical, and will not discuss the question of the equalization of the loaded and empty haul, which is involved here and which is the true reason why loading roads sometimes insist on routing cars to connections.

It will be readily appreciated that railroads will not diminish their equipment by supplying it to their connections to the extent of crippling their local service. Their first object is to protect business on their own line, and, second, to cooperate with their connections on reasonable assurance that substantial traffic results will follow. They will not send cars to connections on an uncertainty for purely prospective business.

To meet just such conditions the private cars are largely used, and, as will be seen, it would be a great hardship to compel the originating roads to pay penalties in the shape of per diem charges for the time these cars are held for loading, while on a mileage basis all roads interested in the traffic share the expense of car service alike.

The question of interchanging identical cars is eliminated by the handling of the special traffic in private cars, since car balances between carriers can be adjusted on the basis of the total number of cars handled and identical cars need not be returned to connections.

I must apologize for taking so much time, Mr. Chairman.

Mr. STEVENS. Have you concluded your statement?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. Who repairs your cars? For example, you send out those ten cars to the Pennsylvania road. What arrangements have you for getting them back and repairing them?

Mr. REICHMANN. We have our own car shops at Chicago, at Kansas City, at St. Louis, and at Fort Worth, Tex.

Mr. STEVENS. Then you repair your own cars, do you?

Mr. REICHMANN. Yes; we do not repair them exclusively. Cars that are deemed by railroads to be in such a worn-out condition that they are not safe for traffic are sent to these special plants of ours. All ordinary repairs and running repairs to cars fit for service, and which may yet have flat wheels, or worn-out brasses, or on which the air hose may be burst, are repaired under the rules of the Master Car Builders' Association, which is an organization to which all railroads and all private-car lines, practically belong, for the purpose of creating uniformity in regard to this matter of repairs. They send us the bills for repairs, for which the owing company is responsible. Breakage, or what is known as "unfair usage," are assumed by the railroads. They repair these breaks at their own expense.

Mr. STEVENS. You repair the ordinary wear and tear, and they the extraordinary wear and tear?

Mr. REICHMANN. Cars requiring general overhauling, which are in a worn-out condition, we get in our shops; but ordinary running repairs are made right on the railroads by their own force of men.

Mr. STEVENS. And you pay for it?

Mr. REICHMANN. Yes, sir. They send us bills once a month, and we pay them.

Mr. STEVENS. But if something is extraordinary, on account of an accident or from some other extraordinary cause, they repair it at their own expense?

Mr. REICHMANN. We necessarily would not know anything about it. The car is to be repaired, and kept in good condition.

Mr. STEVENS. By them?

Mr. REICHMANN. No, sir. I want to get the whole statement in about that. Sometimes they may not have the special parts required for repairs to cars, and they use what is known as a defect card, which is an authority to the owner to repair the car and bill the railroad for it, so that the thing works both ways.

Mr. STEVENS. What I want to get is the language of the general contract for repairing, and about what you are expected to do. Under that statement you are expected to furnish them a car in good ordinary serviceable condition.

Mr. REICHMANN. We must furnish the cars subject to railroad inspection.

Mr. STEVENS. Yes; and you must maintain the car in that condition.

Mr. REICHMANN. Only so far as the natural wear and tear of the car is concerned.

Mr. STEVENS. Certainly.

Mr. REICHMANN. Yes.

Mr. STEVENS. And that you are responsible for?

Mr. REICHMANN. That we are responsible for.

Mr. STEVENS. But anything above that they are responsible for?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. That is what we wanted to get at. Have you exclusive contracts with any railroad companies for taking your cars?

Mr. REICHMANN. We have none whatever, sir.

Mr. STEVENS. You furnish cars as they are called for?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. Wherever your storage points are?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. Where are your principal storage points?

Mr. REICHMANN. At Chicago, St. Louis, Kansas City, and at Fort Worth, Tex.

Mr. STEVENS. You can answer it "yes" or "no." You have no business with shippers, and no dealings at all?

Mr. REICHMANN. As shippers, no.

Mr. STEVENS. You do not solicit the use of your cars by shippers?

Mr. REICHMANN. No, sir.

Mr. STEVENS. You do not offer any inducements for shippers to ask for your cars from the railways?

Mr. REICHMANN. None whatever, sir.

Mr. STEVENS. You have your entire business with the railways?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. Then the charge that has been made at times that you offered inducements to shippers to ask for your cars on their lines is false?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. Are your cars used for any other purposes than hauling the live cattle?

Mr. REICHMANN. The cars when turned over to the railroads are in exactly the same position as a railroad car, and are used by the railroad according to its traffic requirements.

Mr. ADAMSON. Before he leaves that question of exclusive contracts I would like to make it a little plainer.

Mr. STEVENS. Certainly.

Mr. ADAMSON. You say that you have no exclusive contracts. Do you mean to say that no railroad makes a contract with you to use your cars alone?

Mr. REICHMANN. That is what I mean. No railroad makes a contract to use our cars exclusively for any special purpose, or any purpose whatever.

Mr. STEVENS. If a large cattle shipper and cattle owner from Texas or Oklahoma came to you, would you have any way of doing any business with him at all if he wanted your equipment?

Mr. REICHMANN. I stated in my general statement, and I thought I made it clear there, that we sometimes leased cars to shippers for special purposes.

Mr. STEVENS. And let them make their own arrangements with the railroads?

Mr. REICHMANN. Let me illustrate that. I have a case in mind that will fit it exactly. Two years ago, just about two years ago now, the furnace men and the pig iron men who were under contracts for heavy deliveries of pig iron before July 1 could not get the cars at the coke ovens to move the necessary coke, and some of the shippers came to us and leased our cars from us on a monthly rental. They paid us $18 a car a month for that service on account of certain changes necessary in the cars and the additional repairs to cars in such service that we

must make. We credited them, against this $18, with the mileage that the cars earned on the railroads. It was their equipment, assigned to their special business by the railroads, and they paid a bonus to us because the cars did not earn any mileage above $7 or $8 a month, and since we charged them $18 they had to pay us a bonus. And, Mr. Chairman, we want to be left in position to make similar arrangements.

Mr. STEVENS. So that you can rent your cars for miscellaneous purposes whenever you have an opportunity?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. To anybody who comes along?

Mr. REICHMANN. We want to serve the public and the railways on reasonable terms, as a matter of contract between us and them. That is the position that we want to be left in.

Mr. RYAN. The shipper who would come to you and endeavor to obtain the use of your cars would have no advantage over any other shipper, would he, in any contract that he might make with the railroad?

Mr. REICHMANN. He would not; and I am certain that a great many of these shippers of commodities would get their own cars to operate in connection with their manufacturing proposition, though the cars themselves did not earn earn sufficient to maintain them. That is true in some cases only—a very limited number of cases.

Mr. STEVENS. The hour of adjournment has arrived.

Thereupon the subcommittee adjourned until Wednesday, February 8, 1905, at 10 o'clock a. m.

WASHINGTON, D. C., *February 8, 1905.*

The subcommittee met at 10 o'clock a. m., Hon. Fred. C. Stevens in the chair.

STATEMENT OF MR. J. H. HALE.

The CHAIRMAN. Will you please give your name and your residence.

Mr. HALE. J. H. Hale, of Connecticut. I am the most extensive peach grower in Connecticut. In Georgia I have something over 2,000 acres of orchard.

Mr. STEVENS. Located where?

Mr. HALE. At Fort Valley, Houston County, the central peach-growing region of Georgia. I know that I grow and ship more peaches than any other individual peach grower in America.

Mr. STEVENS. What is your capacity in average seasons?

Mr. HALE. In average seasons, one with another, in the neighborhood of 300 carloads, in Connecticut and in Georgia, shipped over the New York, New Haven and Hartford Railroad in Connecticut and over the Central Railroad of Georgia. Neither of these lines own or have any refrigerator cars. The service in Connecticut requires only a moderate number of refrigerator cars; it being midway between New York and Boston, we use the ordinary ventilated cars. But we are at times called upon to ship to greater distances, and have either to get ourselves, or have the railroads pick up for us, such refrigerator cars as we can get. We ice them ourselves.

Mr. STEVENS. In what way; before they start?

Mr. HALE. Before they start; and the railroad agent puts on the bill of lading, in addition, instructions to re-ice those cars at certain other points that may be named.

Mr. STEVENS. You indicate that yourself?

Mr. HALE. In a general way; or the railroad also puts on "Re-ice when necessary;" and we find under a good many conditions that they seem never to find it necessary, and many of the cars so shipped have gone to their destination without any re-icing and in a more or less damaged condition. In Georgia, where it is absolutely essential that all the fruit be refrigerated, as the markets, 90 per cent of them, are north of Mason and Dixon's line, in Georgia, where we have at the present time, in the whole State of Georgia, practically 18,000,000 acres of trees in fruit, all of the fruit must be refrigerated, or 90 per cent of it. The first great crop was in 1889 and my orchards were not in bearing condition, and I know but very little of the conditions of refrigeration; but the next great crop of any account was in 1895, and there was another in 1896, and the railroad companies—the Southern Railway also reaches Fort Valley—the Central and the Southern railway companies brought in a various lot of refrigerator cars, mostly the Armour cars, of the Armour line, and the American Transit Company's line, and the California Fruit Transit Company's cars. The agents of each of these companies pushed the growers pretty hard for business, soliciting business.

Mr. STEVENS. What inducements did they offer?

Mr. HALE. The inducements of special service, and then one fellow would have a better car than another; and such inducements as men in competition will ordinarily present.

Mr. STEVENS. Various rates, I suppose—different rates?

Mr. HALE. If I remember, and I think that I am correct, two of the lines had the same rate, and the other was a little lower. I am not absolutely positive of that.

Mr. STEVENS. Did that include the special service of the car line, or was it the total cost to the final destination?

Mr. HALE. For the service of the car, the icing of the car.

Mr. STEVENS. To what market?

Mr. HALE. That would differ, depending on the various markets.

Mr. STEVENS. To New York, for instance?

Mr. HALE. I can not speak positively of that year. I will tell you of other years. Some of the growers made written contracts with the companies to give them all their business. Others took their chances, from day to day, as to where they would get a car. I made a contract with two of the lines and agreed that I would give them 25 per cent of my business, and I contracted with the Armour Car Company for 50 per cent, but I had no set agreement.

Mr. STEVENS. How did that work? Did you get the facilities that you needed?

Mr. HALE. We got the facilities. But the point I wanted to get at was that there being three of those companies there, none of them could be assured of any regular business from day to day. It was very uncertain. Sometimes one company would get 6 or 8 cars out, and then again another would get 6 or 8 cars out, and the other would not get more than 1; and they were uncertain about their ice supply. Macon was the nearest point, and Savannah was 200 miles, and I think they brought some from Atlanta. At one time there was a shortage of ice. One company would have ice and the others would not. And then the company with the ice would get all the business for a day or two. There came a time once when there was no ice in sight for a day

for any of them, and Mr. Armour's agent came to me and asked me what sort of a scrape or lawsuit there would be if they did not fulfill their contract with me. I said I had never been in a lawsuit and I should simply have to stand the loss, and I would know better next time. But within forty-eight hours they had a train load of ice down there and were able to take care of the business, and were able to load or sell some ice to their rival companies, so that we were all helped out and everything was all right.

We found that year that the various car lines evidently did not have facilities for reicing at all points, and a good many cars came into the markets illy iced, or having evidences of having recently been reiced, and having been out some time, or something or other, and they were not in good condition.

Mr. MANN. Could you state what the average crop a day was there then, of perishable crops?

Mr. HALE. No, sir; the figures have gone from my mind. My own crop at that time was from 3 to 5 carloads daily, and peaches were then worth about $1,000 a car in the market.

Mr. STEVENS. In the market?

Mr. HALE. Yes, sir.

Mr. MANN. Down there what were they worth?

Mr. HALE. There was not any price there. There were no buyers there.

Mr. STEVENS. You consigned them?

Mr. HALE. To our agents—various commission men.

Mr. STEVENS. If there was no price there, of course there would have been no damage to anyone if they had been all destroyed?

Mr. HALE. That would be a question.

Mr. MANN. Not if they were not worth anything.

Mr. HALE. There were no buyers there at that time.

Mr. STEVENS. What has been the course of business since?

Mr. HALE. In 1898, there having been various dissatisfactions among growers, the Central Railroad of Georgia, after consultation with some of the largest shippers, perfected an exclusive contract with the Armour Car Lines for placing their cars there. I think that I am correct in saying that that was in 1898. I am quite sure that it was. Under that contract—I think the contract was made some time in the fall of 1897 or the winter of 1898, but I am not positive about that—soon after that contract was made the Armour Car Line people erected our shipping station, a large storage ice house, and at Marshallville, the largest peach growing station, 9 miles below, they erected another one, and some time before the crop season they stored large quantities of ice there in anticipation of the business. I think the rate at that time was the same as the rate that we had paid the Armour Car Company and the A. R. T. Company in previous years, $80 to the New York market and the Philadelphia market, for refrigeration, and $90 to Boston and New England points, which are the points that I ship to mostly.

Mr. STEVENS. That is for refrigeration, without transportation?

Mr. HALE. For refrigeration. Under that contract the company had an abundance of ice on hand at all times and they had an abundant number of cars there. Those cars were iced up every day—that is, a day ahead of their use—and on call by the railroad company we could get cars that were iced and cool at all times for loading. The Armour

Car Company furnished the men to load those cars—that is, they have to be stripped so that each crate in the cars is properly spaced, with an air space around it, and each has to be loaded and nailed down. They furnished these men for loading these cars, but I have a siding into the middle of my orchard from the packing house, and after those were loaded, once or twice a day, the railroad would send an engine down there and haul them into the icing station of the car line and they were reiced; because putting hot fruit into the cars, it melted the ice and they required to be reiced before leaving the station. Our fast fruit train leaves at 6 o'clock every night, and the last haul out of my orchard is made at 4.40 p. m., which leaves an hour and twenty minutes to haul into the station and have the cars reiced. The cars are reiced and leave over the Central Georgia road for Atlanta, and at Atlanta they are reiced at midnight or thereabouts, or between 1 and 2 o'clock in the morning, and they are reiced again at Charlotte, N. C., and then again the next night at Alexandria, Va. That is all when they go to the New York market. When they are consigned to New England points they are reiced again at Jersey City, and my agents at the other end of the line are pretty careful and look after the cars, and we find that they come to the markets with plenty of ice, with the bunkers practically full.

Mr. STEVENS. How much ice is needed at each icing?

Mr. HALE. I do not know. One year, and it must have been 1898, that first year, I made the claim to the refrigerator-car people that as I was producing and packing more fruit than anyone there, and I had a packing shed immediately adjoining the cars and we loaded a car in one or two hours, while the small shippers often held a car for two or three days, and were opening and closing the doors far more than was the case with our cars, and were of course melting the ice more rapidly than in my cars, that I thought that I ought not to pay for their melting ice, and I made a contract for that year that I would pay $10 a car and pay for the actual ice used, and I had the bills rendered at the end of the season for the ice used at the different stations.

Mr. STEVENS. Did that make your price lower?

Mr. HALE. I hoped it would make it considerably lower. In some instances it was $20 lower, and in some instances it was actually higher. I saved that amount of ice. I think that it was a fair deal both to myself and the company, because I paid for the ice that was actually used.

Mr. STEVENS. Did you continue that after that time?

Mr. HALE. No, sir. I paid after that the same as the rest did, although I think they make more profit out of me than out of the smaller growers. The following year the rates were lowered to a crate basis. The minimum required by the railroads is 22,500 pounds in the larger sort of cars, and the refrigeration rate was based on a base price of 12½ cents for crates of 40 pounds. The exclusive contract was in force and has been in force. There is always an abundance of cars there, and there is always a full supply of ice, and the car people keep expert men there, who from day to day travel around the orchards and keep close watch on the crops, so as to be sure and not run out of cars and be sure to anticipate the wants from day to day, and in that way there is a surety of the cars.

Mr. STEVENS. Do you get the style of cars you desire?

Mr. HALE. We get as good as there is, and we get as good service as there is at the present time. I am frank to say to you that there is

not a refrigerator car that I have seen yet that will handle the Georgia peaches in sound condition to market loaded as high as the present minimum the railroads and the car lines require; and that is a grievance that I have. I have talked to the railroads and the car lines about it.

To get up to a minimum of 22,500 pounds it requires us to load a car five tiers high with crates holding 40 pounds each, and if we load to the top tier and pay for the refrigeration we do not fully get it. The bottom tier may be perfectly sound; of the next tier there may be 1 per cent in bad condition, of the third tier, say 3 per cent, and 5 to 7 per cent of the fourth tier, while of the top tier there will be 15 to 25 per cent. And that depends upon the condition of the crop. It is a humid climate down there, and the fruit is somewhat tender and requires careful handling in fact, and if we load as required by the railroads, under the average conditions of the crop we are bound to lose a certain per cent of the fruit. To avoid that I have taken out that many tiers and have only allowed four tiers high. Of course that adds materially to my freight rate. The present rate is 85 cents per 100 pounds, and 12½ cents a crate to New York.

Mr. MANN. What does that make?

Mr. HALE. Two hundred and seventy-two dollars to lay down a carload in New York.

Mr. MANN. Is that the freight or the refrigeration?

Mr. HALE. That is freight and refrigeration.

Mr. MANN. Give us an idea how it is divided.

Mr. HALE. The freight is 85 cents a hundred, and it is 25 cents a crate. It is 36 cents a crate railroad freight, and 12½ cents for the refrigeration, but by reducing to four tiers high, it costs me 45 cents a crate, and 15 cents a crate for refrigeration, or a total of $1.50 a hundred pounds to deliver to New York City, while the rate is supposed to be 85 cents. The average actual cost is $1.50 a hundred pounds to get the fruit there in safety.

Mr. MANN. What does that amount to per carload for freight and refrigeration?

Mr. HALE. Two hundred and seventy-two dollars.

Mr. MANN. How much for freight and how much for refrigeration?

Mr. HALE. I have not separated it. I believe it is $70 for the refrigeration, and the balance is railroad freight.

Mr. STEVENS. The contract is not an entire contract, including both refrigeration and freight. That is, you do not make one contract covering all those items?

Mr. HALE. The railroads issue us a bill of lading, so much a pound, and so many pounds, and then they put the rest for refrigeration.

Mr. STEVENS. Then you make your contract with the railroad?

Mr. HALE. Yes, sir; with the railroad.

Mr. STEVENS. And then you do not look to the Armour people for any damages that may accrue from the nonfulfillment of the contract; you look to the railroads for the whole business?

Mr. HALE. I saw the contract before it was made with the Armour people. I have forgotten the items. I believe they agreed to stand by the railroads in any losses they might have. Yes; we do look directly to the Armour people. We have shipped thousands of cars by them, and they have handled them so well that we have had practically no trouble. In one case I believe I would have had a claim for damages done to the fruit on the upper tiers had I seen fit to press it.

Mr. STEVENS. Please make it clear what contract you make with the railroads and what with the Armour people.

Mr. HALE. No contract with the Armour people at all.

Mr. STEVENS. So that your exclusive contract is with the railroad?

Mr. HALE. Yes, sir.

Mr. STEVENS. So that whatever claim for damages you make must be against the railroad?

Mr. HALE. The only claim that I had I made direct to the Armour people and they settled it. I think under their agreement with the railroads they agree to stand by the railroads. The legal way would be to go to the railroad.

Mr. STEVENS. That is what we wanted to get at.

Mr. HALE. I made the direct claim to the Armour people and they settled it. The year's crop in Georgia last year aggregated nearly 5,000 carloads, all ripening in about five weeks. At the end of that season there is practically no need of the refrigerator-car service in that territory or the territory of the Central of Georgia Railroad.

Mr. MANN. What stations are those peaches shipped from?

Mr. HALE. It is impossible to state. The large stations of Fort Valley and Marshallville shipped a great number of carloads; Marshallville about 500 carloads, and Fort Valley something over 800 carloads. The balance are shipped from smaller stations all over the road. There are really two peach sections in Georgia, the southern one south of Macon and the other of which Rome might be considered the center.

Mr. MANN. Is the refrigeration charge since the Armour people had the exclusive contract more or less than the charge was before the exclusive contract with them?

Mr. HALE. It is less. They reduced it some years ago. It is a less rate and also a better service.

Mr. MANN. Is the supply of cars more readily available now?

Mr. HALE. Yes, sir.

Mr. MANN. Or is it less so than before?

Mr. HALE. Yes, sir; it is far more available—that is, the supply of iced cars.

Mr. MANN. That is, refrigerator cars?

Mr. HALE. In the scramble of these half dozen companies for the business they piled in the cars, but they did not have any ice to put in them, so they might just as well have been box cars.

Mr. MANN. Without these refrigerator car companies at all, would not the railroad companies be able to furnish you refrigerator cars of their own?

Mr. HALE. The Central Road of Georgia, so far as I know, has no refrigerator cars whatever, as I have stated before. And the question that worries me in this matter that is before you now is that if the private car lines are driven out of business I can not myself, as a grower and business man, quite see how the crop is going to be handled as well as it is now. Of course the bulk of my fruit comes out of Georgia over the Southern road and the Pennsylvania, going to the Atlantic coast markets, but there are times when the markets change and we want to divert cars and send them to Minneapolis or Chicago or St. Paul or wherever there may seem to be a good market. We then divert them, and we often get them half way up there and that *market* tumbles and we divert the car again. And we feel at all times,

on whatever road that car is—of the leading roads—that the Armour people are able to take care of it and to ice it surely and promptly. We feel that we pay a good big price for the service, but we do feel that we get an excellent service.

Mr. MANN. Is it your judgment—if you have a judgment on the subject that you are willing to express—that the Central Road of Georgia would be willing or not willing to supply its own cars in sufficient numbers to handle this crop that has to be moved within the course of five weeks?

Mr. HALE. Last year's crop was between 4,000 and 5,000 cars. I may not be absolutely correct about that, but that is very close to it. We have the prospect now of the next crop being 8,000 cars. I do not see how the Central Road of Georgia could own that number of cars and practically have them lie idle—unless they could rent them out, because so far as their own business is concerned they would have to lie idle—for 46 weeks of the year, when they would have very little use for those cars, and I doubt whether it would not make that a more expensive service.

Mr. MANN. Why do you not ship more fruit to Chicago instead of shipping it practically all to New York and Boston?

Mr. HALE. To answer that personally I aim to grow chiefly the grade of peaches that Chicago is not quite toned up to pay for. They are not willing to pay the price for first-class goods. That is really true. Minneapolis and St. Paul and Milwaukee pay considerably more than Chicago.

Mr. MANN. Do they grow better peaches than they do in Michigan?

Mr. HALE. Certainly, certainly, sir.

Mr. MANN. Do you think Michigan people would agree to that?

Mr. HALE. A majority of them would, I think.

Mr. MANN. I have been a peach grower myself in the South, and I would not agree to it.

Mr. HALE. You left the business for a poorer job.

Mr. MANN. I will admit that. Having eaten good peaches from Michigan, I do not agree that Georgia peaches are better. Has not the freight rate something to do with it?

Mr. HALE. With the quality?

Mr. MANN. No; with the fact that you do not ship to Chicago from there?

Mr. HALE. No; because the freight rate has always been lower from Chicago.

Mr. STEVENS. Where from?

Mr. HALE. Fort Valley, Ga.

Mr. STEVENS. Than to New York?

Mr. HALE. Yes, sir; always.

Mr. RYAN. You referred a few moments ago to a claim made directly to the Armour people. What was the nature of that claim?

Mr. HALE. The nature of it was that when some peaches arrived at their destination they were found to be decayed, and an examination was made and the car was a regular sweat box. There were four thicknesses of heavy paper inside it and the bunkers were full of ice. Evidently the car had been used in winter as a warm-storage car, and it had passed all sorts of inspections and they had failed to pull off the paper.

Mr. STEVENS. Speaking of that exclusive contract, you are not a party to any *contract*?

Mr. HALE. None whatsoever. The contract is made by the Central Railroad of Georgia. I have no more to do with it than anyone else, except that President Eagan, of the road, before he made the contract system, came to myself and a number of other growers and asked if there was anything unfair in it to our interests or if we had anything we would suggest.

Mr. MANN. Are you interested in any of these private car lines?

Mr. HALE. No, sir.

Mr. MANN. Have you any interest at all in this matter except as a shipper?

Mr. HALE. No, only as a grower of peaches. I am a farmer and haven't any other interest on earth. I was born on a farm and began work working twelve and a half hours a day, and I hadn't a dollar except what I dug out of the soil.

There is one point I would like to refer to which is not in line with the private car-line question, and that is, that with the increased production of peaches in Georgia the selling price is going down, down, and we have got to a point now—we reached it last year—where more than 2,000 carloads of peaches shipped out of Georgia, as they were last year, do not pay the growers a dollar profit. To get them in market in sound condition, loading as required, costs, railroad freight, a total of 60 cents. It costs 30 cents a crate to grow peaches. I figured it out from the expenses of ten years and it costs us 35 cents. It used to cost 28 cents, and then 30 cents, and now it costs 35 cents, with the increased price of labor in the South, to take the peaches from the trees to the packing house and crate them and get them to the car door, 65 cents a crate is what it costs the Georgia grower, or at least that is what it costs me, and the 60 cents freight makes $1.25. The average selling price last year was about $1.35, leaving the growers 10 cents a crate. In north Georgia about $1——

Mr. STEVENS. That 60 cents freight was the freight to the New York market?

Mr. HALE. Yes, sir.

Mr. STEVENS. Then that is not fair, to compare the price of peaches in Georgia with the price in New York.

Mr. HALE. I said the selling price in the markets; the selling price in the markets averages $1.35.

Mr. STEVENS. In the New York market?

Mr. HALE. In the New York market; yes.

Mr. STEVENS. Oh, that is all right then.

Mr. HALE. I think that is all. I thank you for the opportunity, and if there are any further questions I would be glad to answer them at any time.

Mr. STEVENS. We will now hear from Mr. Pancake.

STATEMENT OF MR. I. H. C. PANCAKE, REPRESENTING THE ALLEGHANY ORCHARD COMPANY.

Mr. PANCAKE. Mr. Chairman and gentleman, speechmaking is not one of my accomplishments, and I feel a little small after hearing Mr. Hale, who says, I think, that he is the largest grower in the world, or possibly he has narrowed it down to the United States. It makes me feel a little small, I say, to follow him, as I am a small grower, but I have been in the business for about seven years. I have been handling refrigerator cars, using that kind of car, for seven years.

Mr. STEVENS. Where?

Mr. PANCAKE. In West Virginia, with our central office located at Cumberland, Md.

Now, if you will ask any questions I will be glad to answer them, or do you prefer that I should make a short statement?

Mr. STEVENS. What is your average capacity for product?

Mr. PANCAKE. Well, without our books that would be quite hard to tell. I have not any stereotyped memorandum of that kind, but it is approximately about 200 cars per annum, with the possibility of its growing to 500 cars in the next few years.

Mr. STEVENS. How long has your orchard been bearing?

Mr. PANCAKE. Since 1893.

Mr. STEVENS. What was your method of getting the peaches to market in the earlier years?

Mr. PANCAKE. The first crop was small. In 1893 we handled the crop entirely by express. Then in 1894 and 1895 the crop was killed. In 1896 we used refrigerator cars.

Mr. STEVENS. Where is your market?

Mr. PANCAKE. Principally in New York City. I presume three-quarters of all the peaches grown have been marketed in New York.

Mr. STEVENS. Over what railroad?

Mr. PANCAKE. Possibly some of those cars were routed from a a point, say, 100 miles east of Cumberland over the Pennsylvania Railroad, but ordinarily the great bulk of them have gone directly over the Baltimore and Ohio Railroad.

Mr. STEVENS. To New York?

Mr. PANCAKE. Yes, sir. Of course we ship to Washington, Baltimore, Philadelphia, and sometimes to Boston.

Mr. STEVENS. When did you begin first to use refrigerator cars?

Mr. PANCAKE. I think it was in 1897.

Mr. STEVENS. What cars did you use?

Mr. PANCAKE. I think the first year—that is 1897—we used a few C. F. T. cars, and I think we used some Armour cars under Mr. Loud. I think we used both the C. F. T. cars and Armour cars in 1897, but not very many of either.

Mr. STEVENS. Whom did you make the contract for the cars with?

Mr. PANCAKE. For the refrigerator cars?

Mr. STEVENS. Yes.

Mr. PANCAKE. We made the contract direct with the Armour people and the C. F. T. people through their agents.

Mr. STEVENS. What did they agree to do—what kind of a contract was it?

Mr. PANCAKE. The first year we had no idea as to how many cars we would need, and they simply agreed to provide what we needed at a stipulated price. Of course that had nothing to do with the railroad freight——

Mr. STEVENS. For a stipulated price they furnished you the service from your orchard to your market?

Mr. PANCAKE. Yes; including icing and everything.

Mr. STEVENS. Everything?

Mr. PANCAKE. Every charge except freight.

Mr. STEVENS. That is what I understand; the freight is extra.

Mr. PANCAKE. Yes, sir; the freight was independent of that.

Mr. RYAN. A separate bill for that?

Mr. PANCAKE. A separate bill; yes.

Mr. STEVENS. And how long did that system continue?

Mr. PANCAKE. That is the system in force to-day.

Mr. STEVENS. It is the system you use to-day, is it?

Mr. PANCAKE. I think so.

Mr. STEVENS. Then it makes no difference to you how many times they are iced in going to market, you make the contract with the company and depend on getting them to market in good condition?

Mr. PANCAKE. Yes; there is no extra charge whatever. Of course there is a stipulated price to each market; so much to New York, so much to Philadelphia, so much to Boston, Buffalo, or Cincinnati, or wherever the peaches go. Each place carries a different charge as a rule.

Mr. STEVENS. Have you any choice of refrigerator lines; that is to say, do several lines compete for your business?

Mr. PANCAKE. Yes; I think there have been a number. I think every year there are representatives from different lines soliciting our business, but we decidedly prefer the Armour cars. We tried the C. F. T., and we have tried the old Provision Dealers' Dispatch, and we have tried the Baltimore and Ohio cars. Probably all those combined, however, have not carried one-tenth of the peaches we have shipped in the Armour refrigerator cars. I think the Armour people have carried nine-tenths of our peaches.

Mr. RYAN. The Armour people have no exclusive contract on that line?

Mr. PANCAKE. With the railroad people?

Mr. RYAN. Yes.

Mr. PANCAKE. Not that I know of. It does not interfere.

Mr. RYAN. Other lines of private cars run over those lines?

Mr. PANCAKE. Frequently. Almost every year, with the exception of last year, if we had a point that was not very remote we used a Baltimore and Ohio car, simply because they could carry 40 or 50 miles without its proving very detrimental to the peaches.

Mr. RYAN. I refer to refrigerator cars.

Mr. PANCAKE. They are refrigerator cars, those Baltimore and Ohio cars; or at least they call them refrigerator cars.

Mr. STEVENS. Are they as good a car as the Armour car?

Mr. PANCAKE. Not one-half as good. We would use them if they were, because they are free.

Mr. STEVENS. Are the other refrigerator lines as good as the Armour lines?

Mr. PANCAKE. We do not think so. We have tried the C. F. T. and the Provision Dealers' Dispatch and we do not think any of them compare with the Armour cars.

Mr. STEVENS. In what does the Armour car excel; is it the kind and style of car or does the Armour company excel in the service rendered?

Mr. PANCAKE. In the first place, they establish an office at our shipping point. They keep a man at our elbow morning and night, if necessary, and we do not have one-quarter the trouble with them. They seem to have more influence with the railroad people than we have and we do not have any trouble in getting our cars promptly to market. In the second place, their cars are better insulated, or at least we think they are, and our peaches are delivered in better condition. If they charged 25 per cent more, still we would prefer to use *them.*

Mr. RYAN. What is the difference now between the charges for the Armour cars and the other lines?

Mr. PANCAKE. We discarded the old C. F. T. cars several years ago. At that time they were a little lower, probably, at the latter part of the season than the Armour cars; but we did not like them even with the lower price.

Mr. STEVENS. Do you know whether you have the same rates for the same service on the Armour line as other peach shippers?

Mr. PANCAKE. No; I do not know that.

Mr. STEVENS. You have not inquired into that?

Mr. PANCAKE. No, sir; I do know this, that we, being much the largest shippers in our community—last season there were only a few applications by others, some few applications for a carload or two, and I think they charged those people probably a small percentage more, very small, simply because it required more expense to get out to their place and so on.

Mr. STEVENS. So that they calculate on the cost of the service somewhat in making their charges; that is your idea?

Mr. PANCAKE. There was this about it. Of course it entailed so much expense to establish an office and put one or two men there, and they did require us, or request us, to state how many cars we could use during the season, and then they would make arrangements and have so many cars either sidetracked near us or rolling in that section or division, or so we could take them up at any time.

Mr. MANN. How long would this office be maintained there?

Mr. PANCAKE. Which office?

Mr. MANN. The Armour office.

Mr. PANCAKE. During the season, beginning, I should say, about the 1st of August or the 20th of July and continuing until the 1st of November. Our season runs about three months.

Mr. MANN. Do they maintain an office there during every shipping season?

Mr. PANCAKE. Yes, sir; so far as I know.

Mr. MANN. Only during the shipping season?

Mr. PANCAKE. Yes; so far as I know. I am very frank to say that the little success I have made in the fruit business I have attributed largely to the good service the Armour people have given us. I do not know what we would do without them.

Mr. STEVENS. You came here at their request to tell us this?

Mr. PANCAKE. Yes; and I came realizing that it is an important thing to me. I do not know what we should do without them. Our industry certainly must suffer, gentlemen, it seems to me, if private lines are abolished and the railroad companies give us as good or better service free. As a matter of course, human nature is alike everywhere.

Mr. STEVENS. That is to say, if they charged you in the aggregate, including cost of refrigerator car and refrigeration and transportation, the same you pay now for the same service, you would be satisfied?

Mr. PANCAKE. I can not see what advantage that would be to the shipper—to trade off the bridge that has carried him for a new one. They might promise to do it——

Mr. STEVENS. What you mean to say is, then, that you demand of the railroads that they shall furnish free the same service you get now by paying for it to the Armour company?

Mr. PANCAKE. Unless they do our business would certainly suffer,

because we find the Armour service is none too good. We should certainly suffer unless they did that.

Mr. STEVENS. What you want is the service, first?

Mr. PANCAKE. What we want is the service, and, as I stated at the beginning, I would willingly pay 25 per cent more than the Armour company are charging us rather than take any risks.

Mr. MANN. Are you interested in any way financially in the Armour company?

Mr. PANCAKE. Not at all, sir.

Mr. MANN. Have you any interest in this matter except as a shipper?

Mr. PANCAKE. None at all. I am looking after number one, and I tell you frankly I do not know what we shall do if we do not have this service. Peaches should be eaten twenty-four hours from the time they leave the trees. I know they can be shipped thousands of miles, but they have to be pulled from the trees in an immature condition. We let them get ripe, and then it takes good refrigeration, and, as Mr. Hale said, we frequently divert our cars after they have started. Last year some peaches that were consigned to Pittsburg were diverted to Cleveland, for instance. We do that without the slightest hesitation, and we realize that we can carry them around from one market to another and then hold them in market for a number of days without any risk. As I see it, the business can not succeed without that.

Mr. MANN. Have any other refrigerator lines offices in your vicinity?

Mr. PANCAKE. None that I know of, sir.

Mr. MANN. So that you are obliged to depend entirely on the Armour service?

Mr. PANCAKE. Not at all. We have the Baltimore and Ohio—this old rattletrap concern—the Baltimore and Ohio cars. They do not furnish half enough of them, even such as they are, however. Then we have Swift; he has an office in Cumberland in connection with his storage house there. And, as I say, the representatives from the different lines frequently solicit us; but we have abandoned them all because we think the Armour cars are so much better.

Mr. MANN. Are there many shippers in that vicinity?

Mr. PANCAKE. There are a few small shippers. The peach belt in our section is comparatively new, comparatively young. We are the largest there, sir.

Mr. MANN. How many acres have you in peach orchards?

Mr. PANCAKE. We have in round numbers about 1,400 acres.

Mr. MANN. How many trees?

Mr. PANCAKE. Approximately 165,000 trees.

Mr. MANN. And what proportion of those have come into full bearing?

Mr. PANCAKE. They are all in full bearing, sir. We have some large private orchards. The different representatives in our company, or most of them, have large private interests, but they are not in bearing. The 165,000 trees are all bearing. The last of them came into bearing last season.

Mr. MANN. Are there many peach orchards in that locality which are not yet in full bearing?

Mr. PANCAKE. Oh, a great many, sir. As I say, they are principally in the hands of farmers and small growers, from one to ten to fifteen thousand trees.

Mr. MANN. Has there been a considerable extension of the business *of peach planting* there?

Mr. PANCAKE. It is expanding rapidly, sir; very rapidly.

Mr. MANN. Do you attribute that partly to the success in getting peaches to market in good shape by reason of the Armour refrigeration?

Mr. PANCAKE. We greatly prefer that refrigeration to express, although express is quicker. We greatly prefer it at the same cost, because the peaches are nailed down solid in the car and then they are handled by our commission men at the other end carefully, whereas the express company knocks them to pieces. The package is necessarily rather frail, and we prefer refrigeration to express, even if it were the same cost.

Mr. STEVENS. Please give us the cost to forward to New York by express and the cost of forwarding your peaches by refrigerator cars. What is the comparative cost between express and refrigerating cars?

Mr. PANCAKE. Well, I know we have had the question up repeatedly, and we have concluded that there is not a very great discrepancy in price as between the two.

Mr. STEVENS. Could you give us the prices? What do you pay for express on your peaches from your station to New York?

Mr. PANCAKE. I think, sir, in less than carloads that it is $1.

Mr. STEVENS. One dollar a hundred?

Mr. PANCAKE. A dollar a hundred by express. The railroad freight from our station—I will mention our central station, it varies a little—is 43 cents.

Mr. STEVENS. And what is the Armour car rate?

Mr. PANCAKE. The Armour car service to this same point is 43 or 43.50.

Mr. STEVENS. That makes it 86?

Mr. PANCAKE. Yes, sir.

Mr. STEVENS. 86.50?

Mr. PANCAKE. And that includes the service of refrigeration and handling and everything, everything except possibly a little cartage in some instances at the New York end.

A BYSTANDER. That is a carload, is it not, instead of a hundred pounds?

Mr. PANCAKE. Yes; that is a carload.

Mr. MANN. Do you mean 43 cents a hundred or $43 a carload?

Mr. PANCAKE. It is $43 a carload for refrigeration and 43 cents a hundred railroad freight, which added makes 86——

Mr. MANN. No; that would not make 86 cents, because you can not add $43 and 43 cents and make 86 cents.

Mr. PANCAKE. Oh, no; I see.

Mr. STEVENS. Then you make two contracts—one with the railroad company for your transportation and one with the Armour Car Line for your refrigeration service?

Mr. PANCAKE. We go to them at the beginning of the season. We say, "We are going to have a crop this season and we want your cars." The first question asked us is, "How many cars can you use?" Well, we approximate the number as near as we can. There is a memorandum made of it, and then they send a man to take charge of the business. Then, we make no contract with the railroad people, because they have an open schedule.

Mr. RYAN. The contract with the Armour people is a verbal agreement?

Mr. PANCAKE. Well, it is submitted in writing, of course.

Mr. STEVENS. Then, it is a written contract between you and the Armour people?

Mr. PANCAKE. If you term that a contract; yes.

Mr. STEVENS. It is a memorandum?

Mr. PANCAKE. It is more in the nature of a memorandum. We stipulate how many cars we will take and approximate as closely as we can to how many we think we will need. I believe this year it ran over that number estimated.

Mr. STEVENS. You agree to take so many cars and they agree to furnish them and do what else?

Mr. PANCAKE. They agree to furnish them and equip them thoroughly with ice, and carry them through to their destination, reice them in transit and deliver at point of destination.

Mr. RYAN. And you pay the Armour people for the service rendered?

Mr. PANCAKE. As to that matter, sometimes we do at the close of the season, but not infrequently it is collected by attaching it to the bill of lading at the other end, which is the same thing. We have frequently used the cars of these—well, the Baltimore and Ohio is the only line——

Mr. RYAN. If you stipulate that you will take 200 cars and you only take 175 cars, what will be done in that case?

Mr. PANCAKE. The price made to us is upon the basis of 200 cars, or whatever it may be. Then there is some little penalty per car for the balance of that 25 cars. I really have forgotten what that is, but it is small.

Mr. STEVENS. So if your crop were a failure what would happen?

Mr. PANCAKE. The contract is made in that way. We make the contract supposing we will have a crop, and it is understood it is canceled if there is no crop.

Mr. STEVENS. Oh, it is canceled if there is no crop?

Mr. PANCAKE. In other words, we do not make a contract until the crop is assured. Last year I remember our contract was not made until the middle of June.

Mr. STEVENS. When do they begin to ship their cars in and get ready for you?

Mr. PANCAKE. As a rule, I think about the 20th of July. We notify them when we are ready.

Mr. STEVENS. And the cars are not brought in until the time comes to use them?

Mr. PANCAKE. If they are I do not know. As I say, they have cars rolling east and west past our station.

Mr. STEVENS. And you do not see the cars until the time comes for you to use them?

Mr. PANCAKE. No; we do not. I thank you, Mr. Chairman and gentlemen, for your attention.

STATEMENT OF MR. A. C. MATHER, PRESIDENT OF THE MATHER STOCK CAR COMPANY OF CHICAGO.

Mr. MATHER. Mr. Chairman and gentlemen, we own about 5,000 stock cars, and I might say in this connection that I think these complaints ought to be better defined. These complaints against the car companies ought to be confined to the singular instead of the plural, because, as far as I can learn, there is no complaint filed with the Interstate Commerce Commission against any private car company (with

ıe exception), and I will defy anybody to find a complaint filed with e Interstate Commerce Commission against any private stock-car mpany. I have here a list of the private-car companies in the United ates, so that you will understand the importance of any legislation ı this subject. This book, the Official Railway Equipment Register, ves nearly 500 private car companies, representing probably $100,-)0,000 invested in various parts of the United States, and this is not mplete, because I notice the name of Armour Car Company is not entioned in it. So it probably does not constitute more than three-iarters of the present private car companies in existence.

Mr. STEVENS. How many did you say?

Mr. MATHER. Nearly 500 car companies, probably representing 00,000,000 of capital.

Mr. STEVENS. Whould you say that the greater portion of those ivate cars are refrigerator cars?

Mr. MATHER. They are all conceivable kinds of cars for all conivable kinds of business. There are tank cars, furniture cars, basket rs, and cars for shipping street cars and all sorts of specially conructed cars.

Mr. STEVENS. Could you put those facts in the record in your stimony?

Mr. MATHER. I can leave this and you can examine it. Here is a ndensed list, and it shows the number of cars and the officers of the rious companies and the various businesses which they are engaged . It is a very important book for you to have in your deliberations, cause you can not legislate for one and not for another.

Mr. STEVENS. Could you leave the book with us?

Mr. MATHER. Yes, with pleasure. I wanted to speak one minute a matter which is of vital interest to me, and that is Mr. Furguson's oposition the other day that you close our shops. We are a small ncern, comparatively speaking, but employ constantly in Chicago proximately 100 men on repair work alone. Now, his proposition enact legislation to prohibit the use of our cars, and thus close our ops and render our property valueless, fairly took my breath away. have listened to anarchists in Chicago, but I never was more surised than at this proposition.

Mr. RYAN. You are not in favor of that?

Mr. MATHER. I did not lie awake one hour on account of the fear such legislation. I only wanted to refer to it.

Mr. MANN. You may not lie awake an hour on that account, but ill we are proposing to do a great deal more than that in the bill hich may pass the House to-morrow. This would not be a drop in e bucket compared with that.

Mr. MATHER. The bill that you will pass to-morrow covers the whole tuation. What I say is that you should speak in the singular and ake it more definite, or to make it absolutely definite in referring to ese charges against the private-car lines.

Mr. STEVENS. I do not think you need concern yourself about that, r. Mather. Now, tell us the nature of your business, how you conıct your business, whom you make your contracts with, and what you agree to do, and how you do it.

Mr. MATHER. I was about to say that there have been some accusations made as to the large earnings of our cars, and I have prepared little article to offset these statements and I would like to read it and

have it go in as a part of my statement. It will not take me but a few minutes.

Mr. STEVENS. Could you not leave it with the stenographer; would not that do?

Mr. MATHER. There are some things I would like to touch on.

Mr. STEVENS. Proceed as rapidly as possible.

Mr. MATHER. It will not take but a few minutes. We have had our troubles, you know, and a few years ago Mr. Midgley, who was joint traffic commissioner in the West, took the trouble to make a fierce attack on the private cars generally. His ground was that they were making such exorbitant profits and so on. I do not say but what sometimes he was misled, because the car business is most deceiving, as perhaps you can imagine. A man says to me "Mr. Mather, your cars run a hundred miles a day and you get 6 mills a mile." That is 60 cents per day or $18 a month. He does not realize that over a third of the time, or probably two-thirds of the time; usually those cars are idle, and at other times are badly delayed.

This is "A word on the other side of Mr. Midgley's fierce attack on the so-called private cars or special equipment." [Reading:]

No account apparently taken of the large percentage of cars waiting for loads, or in the repair shops. How the reduction from three-fourths of a cent to 6 mills per mile run brought ruin to two large companies and many smaller ones, a reduction which never ought to have been made.

I believe experience has shown, and it is generally acknowledged by all up-to-date railway operators, there is a great advantage in having a large supply of well-kept special cars to draw from at the great railway centers as occasion and business may require, and fair compensation should be paid for their use to justify their proper maintenance and charges, for the commodity transported in them ought to be enough to cover the extra expense, if there is any, and thus encourage the ingenuity and enterprise of the people to conceive and develop all improvements possible for the safe, rapid, and economical handling of all products shipped by rail. And I believe everything has been done that patience, money, and ingenuity could devise to add to the comfort of all classes of live animals in transit, from a chicken to an elephant: also in the way of convenient and economical transportation of special machinery, street cars, dressed and cured products; and in no other way do I believe such perfection could have been attained except by the broad gauge and liberal policy of the railroads in handling anyone's equipment whose running gear passed inspection, and it will be noted that most of these wonderful improvements are due to individual ingenuity, capital, and enterprise.

In this connection I might state that my experience of nearly twenty years has been confined entirely to owning and operating improved stock cars, and while the stock cars of to-day may seem simple, they have only been brought about by a vast expenditure of time and money, many sleepless nights, and disappointed inventors, and, in view of all the circumstances, I do not feel that a recital of my experience will be uninteresting or out of place, as it has probably been the experience of nearly all others in introducing any change or new invention in the car line.

So far as Mr. Midgley's ideas are concerned as to the vast profits in operating private cars or special equipment at 6 mills a mile, I presume there is not a railroad manager in the United States who does not know at the end of each month the average earning, as well as the average number of cars, of any special class of equipment on his line, and the errors Mr. Midgely makes in his estimates of earnings, especially of stock cars, with which I am familiar, must be very apparent.

I do not believe there is a railroad in the land on which the average earnings of any line of stock cars will exceed $9 per month per car, unless it might be some line between Chicago and Buffalo, where the railroad takes the cars at Chicago and runs them on fast time to Buffalo and there delivers them to some connecting line; but this is not a fair sample of the average earnings of any equipment, as, while on that road they are in constant motion, in reality much of their time is spent in waiting for loads, in the repair shops, or are badly delayed by railroads. Take, for illustration, the Street's Stable Car Line, probably the largest private-car company, and by referring to their published report of earnings it will be observed that for the three years 1899 to 1901, inclusive, they have averaged gross about $8.22 per car per *month, and I notice by a* published statement in the Railway Age of September 18,

1903, it cost the Atchison, Topeka and Santa Fe Railroad an average of $101 per car per annum for maintenance, or nearly $8.50 per month. So it is very apparent there is a great lack of harmony between the high prices of material and labor and consequent increase in the cost of repairs and maintenance, and the 6 mills per mile allowed for the use of the cars ought to be restored to the original figure of three-quarters of a cent per mile run, and I doubt if there is any other private-car line in the country, except possibly some refrigerator line, who can make a better showing than the Street's company. The great source of loss of any special class of equipment is the large number of cars which have to be carried at the great shipping centers waiting for loads, the demand for which shifts quickly with the least change in the market, and cars must be kept on hand at the various shipping centers to supply the demand immediately, as all orders for stock are sent by wire as soon as the market reports are received by those desiring to purchase.

Now, you understand that all the stock-yard centers, Cincinnati, Chicago, and St. Louis, have their correspondents. Stock comes in and they wire the market in St. Louis, the market in Chicago, and so on. The market that is the cheapest is where the buyers wire to buy. I am speaking now of the cattle trade, you know. If they buy in St. Louis, you have to have a supply of equipment there to supply their requirements; and if they happen to wire Chicago, you have to have a supply there. Consequently you can see how a large equipment has to be kept at various centers and always available.

Mr. MANN. You mean kept idle there?

Mr. MATHER. Yes; and stored near the yards, you know, a very large amount of equipment.

My first experience in this line of work was in 1881. While on a journey east I was detained for twelve hours on account of a wreck, and by the side of the car which I occupied was a stock train having been many days on the road, in one car of which were five dead steers and several maimed and bleeding ones, caused by the frantic efforts of one large and powerful animal in working his way from one end of the car to the other, in accordance with his natural instinct in search of food and water. I thought such a state of affairs ought not to exist in this civilized land, and at once went to work to design a car in which stock could be separated, fed, and watered in the car, obtained a patent, and started out on my mission among the railroads (at first from a purely humanitarian standpoint), and almost without exception I was met with the reply "We have no time or money for experiment; if your trucks pass inspection, we will haul your cars and allow you three-quarters of a cent per mile." And although I used every effort in my power, spent hundreds of dollars in traveling, I could not get a railroad to build an improved car.

Determined not to give up what I believed to be a good and worthy cause, I started out to build a car on my own account, and it is needless to add I expended nearly $10,000 before I got a car that would stand the abuse and hard usage a stock car was subject to. The racks would be broken down each trip by the cattle, the troughs out of place, and at that time it was thought necessary to partition the cattle off and separate them one from the other. But experience soon taught that so long as the animals had even a quid on which to chew it seemed to allay their natural instinct to migrate in search of food, and they would ride content without hardly leaving their tracks from Chicago to New York. Having completed my car I started out to prove its usefulness, not only from a humanitarian standpoint but from the commercial side, in the saving of shrinkage, and so forth, and in June, 1881, made my first trip from Chicago to New York, loading two stock cars, one my improved car, in which I put 18 head of cattle, and an ordinary railroad company's car, in which I put 17 head, the 35 head being raised by the same man on the same farm and under precisely the same conditions, witnesses as to their weight affixing their signatures at the scales just before being loaded in Chicago and after being unloaded in New York. The cattle were run through to New York; those in the improved car were fed and watered in the car while standing on the side track, while those in the common car were unloaded, fed and watered in the yards.

Being determined there should be no question in regard to the difference in conditions of shipment, I held the improved car so as to keep it in the same train with the common car, thereby losing twenty-four hours in time. On arrival at New York they were at once run over the scale and shrank 32¾ pounds per head less than those in the common car. I also followed the cattle to the slaughterhouse and got the dressed weights from the butchers, and the average dressed weight to the live weight,

compared with those shipped in the common car, was a little better, demonstrating fully that the saving in shrinkage was in the meat tissues. I also made similar tests at various seasons of the year, details of which I have in full, a general summary of which I give below, in each case personally accompanying the car, frequently inspecting the cattle while in transit, both night and day, climbing over icy cars while in motion in order to see the condition the cattle were in.

I might say in this connection, and I hope you will not consider it egotistical or anything of that kind, for I am greatly interested in this matter, that on each of those trips the humane society deputized a special agent to accompany the cattle and see that they were handled properly, and as the result of that work, after a meeting or convention—or you might say a congress of the American Humane Society, in Boston, in which was represented the Illinois Humane Society and the New York Humane Society—the Pennsylvania Society and nearly all the States in the Union passed resolutions awarding me a gold medal, Mr. Chairman, which I have here, and which I very much appreciate, coming from them. I value this more than the money I have made in the business, coming from a congress of humanitarians, as it did.

I might say in this connection, too, in favor of the work that we have done, at the close of the Spanish war we had applications for our cars to bring back a great many horses and mules from Cuba. Of course, justly, the soldiers met a great reception, but the mules and horses risked their lives as much as the men. So I told our men to see that every car that went to Mobile was in first-class condition in every respect, in appreciation of which I got a very nice letter from Quartermaster-General True, of the War Department, informing me that they were very much pleased with the condition that the Government horses and mules were in when they came back. We handled several hundred loads from Mobile.

I have here a summary of trips showing the result as to shrinkage saved between the common and our improved stock cars between Chicago and the seaboard:

General summary of trips, showing result at different seasons of the year.

Date.	Shrinkage in common car in pounds per head.	Shrinkage in patent car in pounds per head.	Shrinkage in favor of patent car in pounds per head.
October 22, 1881	50	17½	32½
February 18, 1882	65 1/16	46 5/16	19 3/4
June 1, 1882	56¼	40	16¼
August 21, 1882	24	10½	13½

[Reading:]

Thus it will be seen the average saving in shrinkage at all seasons of the year was a fraction over 20 pounds per head, at the low average of, say, 6 cents per pound (as only the best quality of native steers are usually shipped to the seaboard), and this would amount to $1.20 a head. From the last annual report of the Union Stock Yards and Transit Company there were shipped from Chicago since 1881 21,273,200 head of cattle to the seaboard, which would mean a saving to this industry of $25,427,850 through the use of improved cars, to say nothing about the 57,901,954 head which were received at Chicago during the same period, very many of which had the advantage of being handled in the improved cars. While I do not claim credit personally for this vast saving in money, time, and cruelty through the introduction of improved stock cars, I have contributed my mite, and prior to the advent of improved cattle cars there was hardly a train load arrived in Chicago or New York but what the unloading platform was strewn with crippled, dead, and maimed *animals that would* turn the face of the stoutest heart. How different now!

Having proven to my own satisfaction the advantages of improved cars, I again went to the railroad managers and received the same answer, both verbally and by letter:

"We will haul your cars and pay you three-fourths of a cent per mile run, but will not build or adopt any improved cars or waste any time or money on experiments."

And to show the wisdom of this answer it is only necessary to refer to the Patent Office records, from which I notice there have been granted 474 patents on improved live-stock cars. Assuming there was expended on each one of these patents, in obtaining the same and experiments, $1,000, which I would consider a low estimate, we have nearly a half million dollars expended on improved stock cars in what might be termed experiments to produce the simple affair it is to-day. With the above assurance, and having expended so much time and money, I resolved to go into the business. I organized a company for the purpose of building improved stock cars. I worked night and day among my friends to raise money for that purpose and risked nearly my own last dollar in the venture, as $50,000 or $100,000 would not build many cars, and time has proven the same capital at that time invested in other enterprises might have paid much better.

About the same time many other companies were organized. Much was said in the press, and the business grew, as naturally it should with so much in its favor; millions of dollars were invested in improved or so-called private cars, until nearly all the live stock was shipped in them from the ranch as well as to the seaboard, as the saving in time in transit on account of not stopping to unload for feed and the other advantages were so great that the demand for cars far exceeded the supply, and with quick handling of the same at three-quarters of a cent a mile the business was profitable. The business grew rapidly until about 1893, when during the hard times the railroads saw fit to reduce the mileage from three-quarters of a cent to six-tenths of a cent per mile run. This was a terrible blow to all car interests and entirely too low and brought many to the verge of bankruptcy who were engaged in the business.

As soon as materials and labor commenced to advance some of the companies began to find their repair bills almost equal to their total receipts and were forced into the hands of receivers. Notably, the Hicks Stock Car Company, which had some 2,400 cars. This was soon followed by the Canda Cattle Car Company with some 2,600 cars. Both of those companies were sold out by their creditors. The same thing happened to many smaller concerns, and of all those enterprising men who started in the business some twenty years ago for the purpose of bettering the condition of animals in transit, save myself, not one remained. Street, the most enterprising of all, who, to my personal knowledge, mortgaged his home and all he possessed to build his first car, died many years ago comparatively a poor man. Montgomery, Canda, Hicks, Burton, and many others were obliged to give up when the 6-mill rate went into effect and their cars have all passed into other hands, and why Mr. Midgley should devote so much time, and not only cruelly but unfairly assail any interest where millions have been invested to supply a need that was so absolutely imperative and had to be attained through enterprise, is more than I can understand.

I think no man has a right to so persistently assail any large interest where the blow is liable to glance and seriously hurt innocent parties, and I can not believe his intention is to do anyone so great an injustice, although he seems to take for his illustrations shippers who have two loads of stock to one car, and fill in their shortage from outside equipment.

I want to say here that it is customary in England for the shippers to own their own cars, and they receive mileage the same as we do here, and it usually is about half a cent per mile run, but their cars hold only 5 or 10 tons, while ours are of 30, 40, and 50 tons capacity. None of them are less than 20 tons, or 40,000 pounds. [Reading:]

Of course a few cars in the hands of a very large shipper might earn somewhere approximating Mr. Midgley's figures, running between two given points, but this should not be a criterion to go by; nor should the man who has the resources of a large business at his command be discriminated against. Of upward of 14,000 humane stock cars built by private enterprise and capital not to exceed 500 are owned by shippers.

I believe it is an acknowledged fact that it costs the railroad companies from $3 to $4 a month per car for repairs, and special equipment would naturally cost more. Add to this 6 per cent depreciation and we have at least $7 per month per car fixed charges against an ordinary stock or freight car which must be earned before any-

thing can be set aside to pay interest on the investment and ordinary running expenses. Take 30 cents per day on the per diem basis and it would barely leave 4 per cent on the investment, and I believe a fair rate of mileage is safer for the railroads and broader gauged in every way. It pays a man for what he does. The coal miner might have the capital and feel he could make money by owning 200 cars more than his ordinary requirements, so as to never be short of equipment, or a large manufacturer of machinery requiring special equipment might either build himself or have built for him a car which he did not use oftener than once a year, and then for long runs. Would a per diem be fair compensation for the use of such a car? I presume there are 150,000 special cars, representing an investment of over $100,000,000, in use in the United States to-day adapted to all kinds of purposes which money and ingenuity could devise, and the broad-gauge policy of railroads has stimulated the inventive talent of the country to great rivalry in producing the best car that could be devised for the purposes for which it was needed, and thus we are far ahead of all other countries in the speedy and safe transportation of all kinds of commodities in great volume. In fact it is the volume of business and vastness of the country that has developed the private-car interests to their present greatness, and the compensation should be fair and not be gauged by what is done in spots, but taken as a whole.

I believe it is generally acknowledged that with the greatly enhanced cost of material and labor, three-fourths of a cent a mile is none too much for the use of special or private cars, and it is far better for the railroad companies to be relieved from the responsibility of furnishing or maintaining this class of equipment and then there is no chance for complaint. It is also far better and safer, as the railroad companies of to-day are of such vast proportions, to pay for the work actually done, and I believe that the trainmen and engineers on nearly all the large roads of to-day are paid by the trip, and as much work as possible done by the piece. In fact, railroading of to-day and in 1885 are very different propositions, and if Mr. Midgley believes, as some claim by his bitter attack on private car lines, he can induce the railroads to take any backward steps or invest something over a hundred million in buying up the 150,000 or more special cars now in service and stopping future development and improvement in that direction, I think he is laboring under a delusion, as I believe it to be entirely impracticable on account of the vastness of the country, diversity of requirements, and many interests involved.

I want to say that there is nearly always a motive in everything. And since this agitation has come up Mr. Midgley has come out with a circular to the various railroad managers stating that on account of the present agitation over private cars it would be a very good time to put them on a per diem at a low rate. On a per diem of 30 cents a day we could not live. He advocates something to that effect. And he also incidentally mentions that it would be a good time to get up a company among the railroads and absorb these cars; take them over, I presume, at their own price.

I want to say that it might be interesting to these gentlemen, and I believe to-day that if they have such a source of grievance they could with $10,000 easily build 20 refrigerator cars to suit their own ideas. That is, say they cost $1,000 apiece. They could easily borrow $10,000 on 20 cars. With 20 cars if they made the trips they claim they would make about 720 trips a year, which, if the contents was worth a thousand dollars, you see they would do a very large business. And I believe there is no occasion for their being oppressed in any way provided they are allowed to use their own cars if they want to. And of course I certainly feel that they ought to be——

Mr. STEVENS. Right on that point, can they use their own cars under the system of exclusive contracts?

Mr. MATHER. No, sir; I do not suppose they could.

I met a cattleman who was a large shipper, for whom I have handled hundreds of thousands of head of cattle. He took hold of my hand. He said "Do you think legislation is apt to affect your business?" I said "No," and then I got to talking about what he thought

was the least capital he could start in with in dressed-beef business in competition with the so-called trust. The result of our conversation was that this so-called trust is not such a terribly formidable thing after all, if people had a little capital and a little sand to go into the business. We figured it out that with $50,000 he could do very well. A man with $50,000 could put $10,000 into cars, for which he could get 20 cars (refrigerating cars) he would put $10,000 say into a plant, which would be a frame building near Chicago. That would give him $30,000 left to handle the business with, and he could kill and dress his beef and ship it east. This gentleman then said: "The trouble is if I ship it down to Meridan, the so-called trust would put the price of their meat down to such a figure there that I will be ruined." Then I said: "Ship it to New Haven." "They would do the same thing there," he said. I said: "Suppose you ship it to New York; there are plenty of commission men there, and would they care to cut the price there to ruin you." He says: "I don't know, but I don't think they would cut the price there; because where I would lose $1 they would lose hundreds of dollars. So I don't believe they would."

So I really believe to-day, Mr. Chairman, that a man with $50,000 capital and a lot of sand could start in the dressed-beef business and do business and make money.

Mr. MANN. That is another story from the one you were talking about. I am afraid that if you get into that we will not be able to close this morning.

Mr. MATHER. I only refer to that to show that a good many people are more frightened than hurt. I only refer to that to show that there is a possibility for a man to live to-day even in the beef business. But I had just a few memorandums here I wanted you gentlemen to think over, and I will not take more than a few minutes more to read.

Any legislation, so far as private-car lines are concerned, might do incalculable harm by limiting and discouraging the inventive talent of the country in developing, introducing, and making improvements in the construction of specially designed cars. These cars have been of great benefit to the railroads on account of having a supply to draw from at the principal shipping centers, and a great benefit to the country at large by the savings in transfers, and the quick, economical, and safe transportation of nearly every kind of commodity, as nothing adds to the wealth and prosperity of the farmer or manufacturer, or enhances the value of land or goods manufactured, so much as perfect means of transportation, in such cases as the nature of the product requires and will admit of specially designed equipment.

Supposing laws were passed requiring every hotel in New York to charge the same rate as the Waldorf-Astoria and they could accommodate the guests, how many would the other hotels get? It is just the same with the strong railroads and the weaker lines. If the less favored roads running to and from the same point were not given a chance, the straighter, better equipped, and easier grade lines would naturally do all the business. If you were to pass laws requiring the car companies to accept the same rate of compensation as the railroads pay between themselves for the use of their cars, a great injustice might be done, as the use of cars between railroads is reciprocal, and it is generally acknowledged the present rate of 20 cents per day and penalty now paid between railroads is barely enough to pay for maintenance without anything for interest and depreciation, which it is said only

prevails, as it is found from experience that the average number of cars on A's line belonging to B is about the same as those on B's belonging to A. So you see there is a sort of reciprocity between railroads which does not exist between a car company and a railroad; besides there is such a vast difference in the original cost and cost of maintenance of specially constructed equipment great injustice might be done, and it would appear the only legislation which would be constitutional would be of that nature which can be applied to common carriers. In the true sense of the word a car owner is not a common carrier, has no rights of eminent domain, and can do no transportation business, and legislation controlling a private car company is the same as legislation controlling any strictly private business.

Some claim excess rates of mileage for the use of certain classes of cars are paid amounting to rebates. I think the claim is not true. But if that is true, compel the railroads to comply with the present law and publish their rates of mileage paid for the use of cars, and pay the same to every one, making no exclusive contracts, and other cars would soon come into the field, in these days of stiff competition, if such rates afforded more than a reasonable profit. This puts the proposition on a strictly business principle, does no injustice to anyone, and would save the Government a vast amount of detailed work by the private cars being brought directly under the interstate commerce act. I notice the railway equipment register of January, 1905, shows over 400 individuals, firms, and corporations who have, at large expense, constructed specially designed cars adapted to the better and more economical conducting of their business, to many of whom, I believe, it would be very embarrassing, if not next to impossible, to comply with the requirements of the interstate commerce law, and I repeat there is no doubt that the just and true solution of this question is for the railroads to publish the rates of mileage paid, make no exclusive contracts, and put all car owners on the same footing, requiring the railroads to correct any abuses or overcharges to shippers by the car owners of any nature whatsoever, which is entirely within their power, and which I am sure they will gladly do whenever the charges are properly put before them. I mean to say that if any shipper is aggrieved I believe the railroads would gladly correct the matter.

I have a memorandum here of a few advantages to shippers through the use of private cars:

First. Railroads naturally give preference to very large shippers, and when a large supply of independent cars is kept at the great shipping centers the small shippers can always be accommodated and are never refused by the private stock car lines, and I do not think you will find a complaint of that nature, in fact of any nature whatsoever by a shipper against a private stock car, on record among the files of the Interstate Commerce Commission.

Second. Great saving in time and shrinkage and the better condition of the product transported and ability to always get cars.

A few advantages to railroads of the use of private cars are as follows:

First. It would take many times the number of cars to do the same business if each road were compelled to carry a proper complement of special equipment.

Second. A good car, having special advantages in construction, in a measure offsets on a weak line the advantages of a straighter track, easier grade, and the better motive power of a stronger line.

Third. Experience has proven it is cheaper for the railroads to get their special cars in this way than to own them.

I want to say here it would be almost impossible for us to comply with the present interstate commerce law as to a private car company. We do a very large business for fairs, with men who exhibit fancy stock at fairs. They will come to us for a car for the circuit. They will want to partition the car off and put a double deck in. They have a fancy animal they want to put in the front end and they want to put some grain and things in the other end. We will fix the car up to suit their taste, and in consideration of that we will make them a special rate, so much for the month or two months, covering the time they want it.

Mr. MANN. You say special rates. You make them a rate?

Mr. MATHER. Yes, sir.

Mr. MANN. You do not have any published rate for that?

Mr. MATHER. I say it would be impossible to make a published rate.

Mr. STEVENS. You would give anybody else that demanded the same service the same rate?

Mr. MATHER. You might compare it to a traveler who has a trunk made to suit his convenience. You could not put a trunk maker under the interstate commerce act.

Mr. MANN. We could if he ships the trunks, perhaps.

Mr. MATHER. Yes; they ship them. But we make these cars to suit their convenience, and I might say in this connection, that it does me more good to please a customer, and some of them are as happy as a child with a new toy——

Mr. RYAN. The question of the price of the service rendered does not enter into it?

Mr. MATHER. Of course we expect to get fair compensation, but we are always reasonable and our customers are more than satisfied. I do not believe we have a customer that uses our cars that would not gladly, if they thought it necessary, even unsolicited, write you a letter and tell you the benefit we have been to their interests.

Mr. RYAN. Just two questions, if you please. Have you any exclusive contracts on any railroads in the country?

Mr. MATHER. None whatever.

Mr. RYAN. Have you any advantages at stock yards or other places that are not enjoyed by other private-car line companies?

Mr. MATHER. None whatever.

Mr. STEVENS. Do you know that any other private stock car companies have any advantages over you?

Mr. MATHER. No, sir.

Mr. STEVENS. You do not complain of any?

Mr. MATHER. No, sir.

Mr. STEVENS. And do not know of any?

Mr. MATHER. No, sir.

Mr. STEVENS. Do you make any private contracts.

Mr. MATHER. I should think it would be impolitic to do so.

Mr. STEVENS. You do not do it?

Mr. MATHER. No, sir.

Mr. STEVENS. Do you make any special rates?

Mr. MATHER. No, sir; except as I have stated.

Mr. STEVENS. Suppose you render special service such as you have described; would you do the same thing for somebody else?

Mr. MATHER. Exactly the same.

Mr. STEVENS. Why would you not be willing to publish that rate, then?

Mr. MATHER. The trouble is we would not know in advance what the man wanted. He comes to us and says "I want this car painted yellow, or yellow with red stripes." Some of those men are very peculiar about that, and they will stand at our shops and you can see by the expression of their faces how much interested they are in it.

Mr. MANN. If a man wants it painted yellow instead of an ordinary color, is not that giving him a discrimination?

Mr. MATHER. No; we will paint it yellow for anybody else. We will double-deck it or double-deck it half way and rig it up to suit him; but of course we figure that up with him and say "we will charge you so much for that."

Mr. MANN. Suppose the Interstate Commerce Commission were given the power to say the railroad company should furnish all these facilities which you now furnish, would it be possible or would it not be possible for the railroad company to publish a tariff based upon dividing their car in the same manner in which you proposed, so that all persons would know what that charge would be?

Mr. MATHER. It would be difficult, because people's ideas are so different, as I have said. We could publish a tariff stating that—but there would be no end to it—that a single-decked car, double-decked half way, with some extra partitions, would be so much. We might publish another tariff that double-decked cars all the way and repainted to suit the ideas of the party who wanted them would be so much, but it would involve no end of complications. I think, gentlemen, that there is no question but what you will reach the evil, if there is any, in this Townsend bill, and I do not see why you want any more.

Mr. RYAN. You need not worry about the Townsend bill.

Mr. MATHER. I read it over very carefully, and it seems to me that if there is any grievance that it is covered by that bill.

Mr. ADAMSON. If you could give us an opinion that you could cover it by existing law you would console us much more.

Mr. MATHER. I think the present law has not been enforced wholly; but the best way is probably to correct it.

Mr. MANN. Do you ever give rebates?

Mr. MATHER. We sometimes lease cars.

Mr. STEVENS. For whatever you can get?

Mr. MATHER. Yes. It depends on circumstances, you know.

Mr. MANN. Might I ask you a question in another direction while you are here, a question about these stock cars? Are you able to feed and water stock in transit?

Mr. MATHER. Yes; we are.

Mr. MANN. I mean do you do it?

Mr. MATHER. Nearly always——

Mr. MANN. Is it done with your cars?

Mr. MATHER. We have a few cars for short runs between Chicago and Buffalo where the troughs are not in. Of course, in those we could not water them——

Mr. MANN. I mean on long runs?

Mr. MATHER. Yes; and we do it right along.

Mr. MANN. You are aware, of course——

Mr. MATHER (interrupting). Going to New York they are watered at Suspension Bridge.

Mr. MANN. You are aware that the law is that stock shall not be kept in a car for longer than twenty-eight hours——

Mr. MATHER. Unless provided with facilities for feeding and watering.

Mr. MANN. There is no such provision in the law, and it never was in the law.

Mr. MATHER. I may be mistaken, but I wish you would refer to that.

Mr. MANN. You are mistaken. That is what I wanted to get at.

Mr. MATHER. You are familiar with it——

Mr. MANN. Yes; because I put a bill through this committee and through the House to cover that question, and there is no provision in the law except that they shall not be kept in the cars longer than twenty-eight hours without unloading. What I want to know is, whether it is possible with these improved stock cars to feed and water if cattle could be kept in for longer than twenty-eight hours on a stretch?

Mr. MATHER. Yes; we do it.

Mr. MANN. I know you do. The law is violated——

Mr. MATHER. I would like to know about that. Is that an amendment to the McPherson law?

Mr. MANN. That is the original law.

Mr. MATHER. Mr. McPherson introduced the law years ago, and it was my impression——

Mr. MANN. I have been informed that that law was introduced at the suggestion of the improved live-stock car men for the purpose of keeping in the provision which you suggest, but it was stricken out before it got to Congress, and the law provides that you can not keep stock in cars for longer than twenty-eight hours. This committee recommended a bill changing that so as to permit it, and to be kept where they could be fed and watered.

Mr. MATHER. That was very wise.

Mr. RYAN. It did not become a law.

Mr. MANN. No. The Humane Society defeated that legislation over in the Senate.

Mr. MATHER. I was not aware of that.

Mr. MANN. The practice out West is to unload.

Mr. MATHER. We do now a great deal, because of the stock yards—the stuff going East by Buffalo is unloaded at these stock yards.

Mr. MANN. I wanted to know whether it is practical and humane.

Mr. MATHER. Perfectly so.

Mr. MANN. To feed and water the stock in the cars?

Mr. MATHER. Yes. In the early stages of this industry the Humane Society watched this very thing with a very jealous eye, and they had agents nearly every trip that I made in the early stages go with me to see the cattle fed and watered in the car.

Mr. MANN. I think it is unusual for the Humane Society to wait for information before it offers its judgment.

Mr. MATHER. They did in this case, you know.

Mr. RYAN. What is the time between Chicago and New York City by the route usually traveled from your stock yards?

Mr. MATHER. Well, less than sixty hours. I mean without unloading. Of course, if they unload it takes a little longer.

Mr. RYAN. Then in that case you take care of them at Suspension Bridge.

Mr. MATHER. The railroad company has feeding and watering facilities at Suspension Bridge where they feed and water them.

Mr. STEVENS. Do you know that the railroad companies furnish some special facilities in the way of decorating and fixing cars for customers?

Mr. MATHER. I do not think they would undertake it.

Mr. STEVENS. They do in some instances.

Mr. MATHER. We do it because we are close to our business.

Mr. STEVENS. Do you not know that the railroads do it?

Mr. MATHER. They may do it, but not to my knowledge——

Mr. STEVENS. Do they not do it for some of the brewing companies?

Mr. MATHER. I doubt it. I think all the cars painted specially for the brewing companies are owned by the brewing companies. I may be mistaken about it.

Mr. STEVENS. You are mistaken on that, as I know. If they do it for the brewing companies why could they not do it as well for other customers.

Mr. MATHER. Well, it would subject them to a good deal of inconvenience, and they being very large institutions and they are not right down close to their interests like a small concern.

Mr. STEVENS. Why not? If they arrange cars for brewing companies and other companies as they do—paint them up and fix them up with different appliances needed by their customers—why could they not do it in other instances?

Mr. MATHER. I presume they might.

Mr. STEVENS. You say that there are no exclusive contracts in the cattle-car business?

Mr. MATHER. None.

Mr. STEVENS. You solicit business, do you not?

Mr. MATHER. No, sir; not now.

Mr. STEVENS. In what way do you get the business?

Mr. MATHER. It comes to us. The cars have become so well established that when a shipper wants a car the railroad agent telephones over to our shops and says he would like 10 cars, or whatever it is, and we say "All right."

Mr. STEVENS. Where do you have your shop?

Mr. MATHER. Forty-fifth street, Chicago.

Mr. STEVENS. Any other?

Mr. MATHER. A small place in East St. Louis, where we principally do repairing.

Mr. STEVENS. Any other place?

Mr. MATHER. No, sir.

Mr. STEVENS. Then if your cars were needed at Cincinnati or Pittsburg or Buffalo what would be done?

Mr. MATHER. They are held there by the railroad companies on the sidings.

Mr. STEVENS. They send them from Chicago?

Mr. MATHER. Yes; or they stop them coming back from the east.

Mr. STEVENS. Now, in order to get business from the railroad companies do you give them any special advantages, one railroad over another?

Mr. MATHER. No, sir; not in the least.

Mr. STEVENS. Or give one time over another?

Mr. MATHER. No, sir.

Mr. STEVENS. In order to have your cars called for by shippers do you give one shipper an advantage because he asks for your car?

Mr. MATHER. No, sir.

Mr. STEVENS. Do you give him any advantages in the way of watering or feeding stock?

Mr. MATHER. No, sir.

Mr. STEVENS. Do you know whether any of your competitors do likewise; have you heard any complaints?

Mr. MATHER. I am not familiar with that, but I have not heard any complaints.

Mr. STEVENS. You have no complaint to make on that?

Mr. MATHER. No, sir. We have had more demand for our cars than we could furnish.

Mr. STEVENS. On an even basis with your competitors?

Mr. MATHER. On an even basis; yes, sir. We have more calls nearly every day that come in to us from the railroads at Chicago and various places than we can supply.

Mr. STEVENS. Could you tell us the average monthly earnings per month of your car?

Mr. MATHER. They will not average $9 gross.

Mr. STEVENS. What does it cost you to maintain them?

Mr. MATHER. I figure that it costs about $3.50 a month for repairs.

Mr. STEVENS. That would be an average profit then of $5.50 or $6 a month?

Mr. MATHER. No.

Mr. STEVENS. What do your cars cost?

Mr. MATHER. Approximately, $700 each.

Mr. STEVENS. What is the life of them?

Mr. MATHER. Of course, that is a little indefinite; they are constantly being renewed by repairs; we are constantly putting in new brasses, and new wheels, and new sills——

Mr. STEVENS. What do you charge off for depreciation each year?

Mr. MATHER. Six per cent, which is the Master Car Builders' regulation.

Mr. STEVENS. Do you abide by that?

Mr. MATHER. Yes.

Mr. STEVENS. Is that included in the $3.50 monthly maintenance?

Mr. MATHER. That is not included; that is repairs alone; that is an extra expense.

Mr. STEVENS. So that the stock account and the depreciation account is extra?

Mr. MATHER. Yes.

Mr. STEVENS. What would that be?

Mr. MATHER. I say that it costs about $3.50 a month for repairs, and our depreciation is 6 per cent under M. C. B. rules; that is what we calculate it costs us.

Mr. STEVENS. That would be $700 per car, you say?

Mr. MATHER. That would be pretty nearly——

Mr. STEVENS. About $3.50 more?

Mr. MATHER. About $3.50 more. We do not net over 4 per cent on our investment.

Mr. STEVENS. On your actual investment?

Mr. MATHER. On our actual cash investment.

STATEMENT OF HON. GEORGE F. GOBER, OF GEORGIA.

Mr. Chairman and gentlemen of the committee, I am a lawyer; have been circuit judge for fifteen years, and I am also interested in several other things, one of which is peaches. I am to a certain extent familiar with the legislation by Congress within the province of the committee and the results. I understand the bill under consideration and appreciate, as a lawyer, some of the controverted questions presented to this committee and to Congress.

As a grower of peaches in Georgia, I am interested in this measure in so far as it affects my interests. I gave a contract last week for 85,000 peach crates to be used this coming season. These will fill about 150 cars with peaches. If all my orchards should bear fruit I would need a great many more crates than these.

The growing of peaches in a commercial way is a precarious business. You have a tender fruit and one that is marketed from 500 to 1,200 miles from the orchards. Two things are absolutely necessary—proper refrigeration and fast transportation. If we do not have these things our interests suffer. One trouble with us has been the failure of the railroads to make their advertised schedules. The peaches are sold at 1 o'clock in the morning on the dock in New York City. A car that is delayed goes over for twenty-four hours. I use New York for an illustration, but similar local conditions obtain in some other markets.

The railroad rates from Georgia are about 80 cents per hundred, and from California, $1.25 per hundred. The distance is about three times as great. The Interstate Commerce Commission has said that the Georgia rate is reasonable, although the railroads will haul the same amount of stuff in the other direction for a much less rate.

However, to some extent we can get along with some delay in transportation. The Elberta peach, under proper conditions and with necessary refrigeration, will stand up well much longer than might be supposed. Without proper refrigeration it is quickly ruined.

There have been a large number of car lines engaged in refrigerating peaches and other fruits and vegetables. In Georgia last year there were about 6,000 cars of peaches produced and shipped. It is figured that it takes about eight tons of ice to start a car. The bunkers of the car are first filled, the car is loaded, and the heat of the fruit and the time consumed in loading, cut out a good deal of this ice. The bunkers are then refilled and the car is ready to go. At icing stations the bunkers are filled on the way, and to properly refrigerate the fruit the bunkers should be kept full.

To properly refrigerate fruit in transit several things are involved. First, there must be a large supply of cars. A car rarely makes a second trip from the same section during a season; possibly one-fourth of them do. This is an expensive equipment, in that the cars must be strong and tight; strong that they may carry the ice in addition to the peaches, and tight that they may hold the cold air and exclude the hot air. There is but one kind of car that a grower can afford to use, and that is the very best one he can get. These cars ought not to be used to transport many other things. I remember once that I used a refrigerator car that had been loaded with guano. My peaches got to market in bad condition. A car should be clean and sweet in order to

afford good results. Say there were 6,000 cars from Georgia last year; it would take about 48,000 tons of ice to start them going. To collect and house that ice, ready to hand just when you need it, is a tremendous undertaking. It takes a man who has had experience in the manufacture and storage of artificial ice to appreciate the undertaking. Natural ice, as far as I know, is not stored in Georgia. The representative of one of the refrigerating companies told me that last season his company used, in north Georgia, about 400 cars of natural ice from the Lake region, and after the loss by melting, the ice cost his company about $5 per ton. This was in addition to all the artificial ice they could get in Georgia and Tennessee, and in addition to the ice required at reicing stations upon the way.

The shipping of a crop of Elberta peaches from a certain section lasts from ten days to two weeks. There is not a railroad in Georgia which could use such an equipment on its line of road for carrying peaches for more than three weeks in the year. It is a costly equipment, and should be of the very best. Its business management must be strenuous, exact, and wanting in no respect. Such a refrigerating company deals with big growers and little growers, and each one of them must have proper service and get it when he needs it. Delay here is more than dangerous; it is ruin.

This brings me to this point. The business of refrigerating fruit in transit is a business of itself. A large road like the Santa Fe, having citrous fruits to transport during the winter, might offer a refrigeration service, as I understand it does. But it has not got enough cars to haul the Georgia peach crop; and if it were in Georgia and depended on the Georgia business, it could not afford to own the refrigerator cars necessary. This service is separate and distinct from the transportation or pulling of the cars by the railroads after they are loaded. A railroad company gets its charter, builds its road, and becomes a common carrier. The largest part of its investment is in the right of way, roadbed, depots, etc. Upon such a corporation devolve many duties to the public, and it could not lay down these duties and get away from them if it wanted to. So far as its interstate business is concerned it is under the control of Congress.

I believe that any Congress of these United States will treat railroads and all persons fairly, if they can find out how to do it. However, when you come to deal with a refrigerating company, which has all of its main investment on wheels and has no charter as a common carrier, Congress can not compel it to perform this service in any particular locality. Its equipment could take wings in a night, and it might quit the refrigerating business any day it might conclude that it was no longer profitable.

As I have said, there are different companies. Armour & Co. claim to have 14,000 cars. Taking the cost of these cars and the cost of their icing stations, while I know nothing of their business, I would guess that that company has from $12,000,000 to $15,000,000 invested in this one business. What railroad company could afford such an equipment, and where would the growers of peaches be without it? It may be said that this company makes money. It ought to. I take it for granted that if there was nothing in it for them they would quit. If Congress should put onerous obligations upon them, they would withdraw or else give inferior service.

Is has been urged that certain railroads give Armour & Co. exclusive contracts. I have called attention to the great preparation that must be made in connection with the service of these cars in order that that service may be proper and satisfactory. All these things which are necessary to be done, the collecting of ice, the packing of cars, the securing of help, and the requisite material for loading, make it good business for any refrigerating company to have an exclusive contract with a railroad if it can get it.

A refrigerating company with a large equipment can use its equipment in different sections of the United States at different seasons of the year. It can go where the business is. It can haul the oranges of Florida and California at one season and vegetables from certain sections at certain seasons. It can begin on the peach crop in the South in May and June and follow it to the end in October up in Michigan. In winter it can haul apples and potatoes. A railroad, being confined to one section, can not do this. It is a fact that this businsss can be done properly only through an aggregation organized for this special purpose. It is a business just as the sleeping-car service is a business, and any onerous obligations put upon it will fall upon the growers.

Since the Interstate Commerce Commission has determined that a rate of 80 cents from Georgia is a reasonable rate as compared with a rate of $1.25 from California, no grower can hope for anything from that tribunal. I do not believe it would help the grower to place onerous obligations upon the refrigerating companies. I, for one, would prefer to deal with the refrigerating companies upon a business basis for the best service they can afford.

Now, as to the private car lines competing with individuals. It is said that some of those lines deal in produce and compete with the commission people. I do not know as to this, but I am sure that if those car lines will come to Georgia and handle peaches there are but few growers who would not be glad to sell to them. The growers have been trying for years to market their crop on the track.

Now, Mr. Chairman, I would be glad to answer any questions the committee has. I said that I was a lawyer. I have been interested in farming, though, sir, all my life, and I am like my friend Mr. Hale, I am interested in peaches. I am interested in about 3,000 acres of peaches. I had 1,500 acres last year that had no peaches. This year I expect to ship a good many peaches, if I have a crop. At least, I am president of a company and a large stockholder in it, located some 50 miles below Mr. Hale's place—45 to 50 miles. We have about 1,100 acres there. But I reside about 150 miles north of him, and that is where my main body of peaches is.

Mr. ADAMSON. What is your prescription, to let them alone?

Mr. GOBER. Well, so far as the refrigerating companies are concerned, I don't know that we have any complaint beyond about what Mr. Hale said.

Mr. ADAMSON. I didn't hear Mr. Hale.

Mr. GOBER. He spoke about the upper tier. We have complained about that. The refrigerating companies turn around and tell us that there is no money in it to them, unless they get the upper tier.

Mr. STEVENS. It is a question of minimum loading?

Mr. GOBER. Yes. The service of the Armour Company has been satisfactory, so far as I know. There has been something said in ref-

nce to the contract. So far as I am concerned I don't think I ever de a written contract with them in my life.
Ir. STEVENS. You make it with the railroad company?
Ir. GOBER. No; it is a verbal contract with them. These people l send their agents around very early in the season. They want an a of about how many cars we will need, and in good time these cars parked and arrangements are made for the ice. We go to them l tell them we need so many cars and those cars are on hand.
Ir. ADAMSON. What do you mean by "them;" the railroad com- ıy or the Armour Company?
Ir. GOBER. I mean the Armour Company.
Ir. STEVENS. What is your agreement with the Armour Company?
Ir. GOBER. We deliver these crates at the door of their cars. They l them down and refrigerate them to our destination.
Ir. STEVENS. That is, they furnish the cars, the facilities, the rigeration, from your point to some other point for a certain sum?
Ir. GOBER. Yes, sir.
Ir. STEVENS. That is the service they perform?
Ir. GOBER. Yes, sir; and they load these crates. You see, if we them in there loose we would have to space them so that this cold could get on either side of them——
Ir. STEVENS. Who loads them?
Ir. GOBER. They do.
Ir. STEVENS. And who does the unloading?
Ir. GOBER. I could not tell you, sir.
Ir. STEVENS. You do not do it?
Ir. GOBER. No, sir.
Ir. STEVENS. They do it?
Ir. GOBER. I suppose they do. I have been on the dock in New rk City when they were selling these peaches, but I have never n——
Ir. STEVENS. I wanted to get at the exact service performed by Armour Company.
Ir. GOBER. They furnish the cars and load the peaches and reice cars in transit.
Ir. STEVENS. All for one consideration?
Ir. GOBER. Yes; all for one consideration—I believe 12½ cents a te.
Ir. STEVENS. They may or may not unload them—you can not say?
Ir. GOBER. I could not say. I rather think, though, that they oad them.
Ir. ADAMSON. Is that 12½ cents to them in addition to the railroad e?
Ir. GOBER. Yes, sir.
Ir. ADAMSON. Suppose that Congress should require the railroad ıpany itself to furnish this equipment, would it be your judgment t the equipment might be as good or better or worse?
Ir. GOBER. I think it would be worse. Every railroad can not have eparate icing station on the line between New York and Georgia.
Ir. STEVENS. No; but the Southern Railroad could. For example, ld they not maintain the same icing stations that are maintained r?
Ir. GOBER. They might do that, sir, and the Southern Railroad s that. We ship cars over the Southern from some other roads,

and we deal simply with the initial road. The Supreme Court has held that you have to follow the road up. We have a Georgia statute that says you can hold the initial road.

Mr. ADAMSON. So, the interstate commerce has knocked up the old common law?

Mr. GOBER. Its seems so. You know what has been held in reference to stage coaches?

Mr. ADAMSON. Yes; that is what it does.

Mr. STEVENS. Do you think if the railroads refused to make joint rates that you would be without remedy then?

Mr. GOBER. Well, we are getting off in a big territory now. I don't like to talk about a thing unless I know exactly what I am saying.

Mr. STEVENS. But they do make joint contracts as a matter of fact?

Mr. GOBER. Heretofore the initial road has given us a bill of lading and we have taken our bill of lading. I think if this business were taken away from the refrigerating companies by Congress the business would suffer. Take one of these refrigerating companies and you will find that they have the best business men they can get.

Mr. ADAMSON. Is not this about your position: That you feel that you think it would be better to realize on your peaches during your lifetime than to prepare a good system for future generations?

Mr. GOBER. I suppose that would about cover it; yes. I know we get along under the present status, and I am afraid to change it. That is the truth.

Mr. STEVENS. Did the Central of Georgia consult with you concerning the making of exclusive contracts?

Mr. GOBER. We are not on that line. That is south of us.

Mr. STEVENS. Then you were not consulted concerning that?

Mr. GOBER. The Aiken road, upon which I have most of my peaches, has spoken to me about a contract with Armour for this year.

Mr. STEVENS. They have an exclusive contract?

Mr. GOBER. I could not say. I rather think they have, but they have asked me if it is satisfactory to me to ship with these people, and I told them yes, more satisfactory than anybody else. There is the Swift car, and the Armour car, and the C. F. X., and the C. F. T., and a whole parcel of them. I hauled a lot of crates 6 miles from a siding year before last to get shipment by the Armours. That road, it seems, had an exclusive contract with the Swift Company. I thought I had better service with the Armour Company, and so I hauled those peaches away 6 miles in order to ship them on the Armour cars.

Mr. ADAMSON. How many companies are there that furnish these cars?

Mr. GOBER. I could not tell you exactly. We deal with those companies that I have stated.

Mr. ADAMSON. If there are a number and they compete for business, may they not compete as well for wholesale business as for retail business?

Mr. GOBER. What do you mean by wholesale and retail business?

Mr. ADAMSON. If they all compete for a contract to carry the whole business of a certain section, is that unjust discrimination if one of the roads gets it?

Mr. GOBER. I don't know.

Mr. ADAMSON. You are a lawyer?

Mr. GOBER. I am not much of a United States lawyer.

Mr. ADAMSON. You are a lawyer as well as an authority on peaches.

Mr. STEVENS. Right on that same point, have you considered what that exclusive contract might be under the provisions of the so-called Sherman Act—restraint of trade?

Mr. GOBER. Yes; I understand the provisions of that. I understand the bearing of it. Of course, as I say, I don't like to talk about a thing that I do not know all about.

Mr. STEVENS. You would not like to give an opinion on that?

Mr. GOBER. No, sir.

Mr. ADAMSON. Suppose the exclusive contract is made after hearing from all of them and letting them all bid; what discrimination is there in that?

Mr. GOBER. None, sir. I will tell you something else. When we have had competition there with these different refrigerating lines we have paid the same price to each one of them.

Mr. ADAMSON. What is the reason you can not say to Armour, "What terms are you going to give us;" and to the other companies, "What terms are you going to give us," and then whoever makes the best bid give the business to?

Mr. GOBER. We might do that and ask the railroads to give it to the lowest bidder; we might do that.

Mr. MANN. Is there any difference in principle between giving an exclusive contract for service guaranteed to be of a certain character and the railroad reserving exclusive authority to render that service itself?

Mr. GOBER. I do not see that there is. Why could it not get its cars from Armour, or Swift, or anyone else? What right would you have to go to them and say, "Here, you shall get these cars from so and so?" We might as well tell them that they shall buy their locomotives from some particular manufacturer or their cars from some particular manufacturer; I don't see any difference.

Mr. RYAN. But does not the railroad make these exclusive contracts in the first instance without consulting the shipper?

Mr. GOBER. As I say, I have been spoken to, but I do not know. I do not suppose they consult them all.

Mr. STEVENS. Do any other lines have offices there soliciting business?

Mr. GOBER. We have had; I don't think they had last year; but Swift and possibly one other company have had offices there. Armour & Co. has had so much superior service to Swift that the Armours have gotten the business. So far as I know, at our place there the people are satisfied with their service.

Mr. RYAN. Has the cost of the service increased since their competitors left the field?

Mr. GOBER. No, sir.

I tell you gentlemen the biggest job in this whole business is the ice. I was told what ice cost them; and I was told further that they did not make anything on 2,100 acres of peaches that they took out of north Georgia last year on account of the increased cost of ice. They could not get proper cars to haul it from Sandusky down there, and a great portion of it melted. It takes a strong company to properly attend to the needs of this business. When the Armour Company performs this work it is like a strong man doing the work; they can do it properly, and that is what we want.

Mr. MANN. In other words, the problem is to furnish ice in a country where ice does not grow in order to furnish peaches in a country where peaches do not grow.

Mr. GOBER. Yes, sir.

STATEMENT OF MR. J. D. HENDRICKSON.

Mr. STEVENS. Please state your full name and residence.

Mr. HENDRICKSON. J. D. Hendrickson, Philadelphia.

Mr. STEVENS. And what is your business?

Mr. HENDRICKSON. I came here, sir, as my friend Mr. Hale said, as a farmer, as a peach grower in Georgia.

Mr. STEVENS. What place?

Mr. HENDRICKSON. Leepope, Ga.

Mr. STEVENS. How long have you been in the business?

Mr. HENDRICKSON. I have been interested in the peach business since 1889, and have been interested in the growth of peaches since 1895.

Mr. STEVENS. Tell us what you know about the shipping of peaches, the use of railroad equipment and refrigerating-car lines and that sort of thing.

Mr. HENDRICKSON. Well, prior to 1898, and including that year, the business of refrigerating peaches seemed to be in the hands of several different companies. During the year 1898, when the crop reached about 3,000 acres, the business was opened to several different refrigerating companies, none of which were prepared to furnish the necessary equipment, either in cars or ice, and the interest suffered very materially. There were a great many carloads of peaches that went to waste that year. We could neither have cars nor ice; consequently they could not be transported to a northern market. I believe it is a well-established fact that peaches grown in the State of Georgia, in a commercial way, would be of no value to the grower except through proper refrigeration. From the failure to handle that crop of 1898 properly I believe the business passed almost exclusively into the hands of the Armour people or the Fruit Growers' Express Company, whose cars have been used largely, or almost entirely, over the district that I speak of, known as middle Georgia. Since the year 1898 I can say that we have had excellent service. During the last crop I handled something over 200 carloads of peaches, all of which were transported in the Fruit Growers' Express outfit, and I can say here, Mr. Chairman and gentlemen, that every car, without any exception, came to market in good condition; came to market with the bunkers more than three-fourths full of ice, I would say, showing that they had been iced and reiced properly. We make it a business. I have a party who examines carefully every car that is run into our markets, and that was the result of that, that they were all well iced, showing that they had been well iced in traffic. All came in good condition.

Therefore, personally, I have no trouble at all with the transportation company or the refrigerating company. I am like my friend Mr. Hale, I would like to see a little lower rate; I would like to see also lower minimums. Last year was an exceptionally good year, so far as weather conditions were concerned. While I admit that under such conditions as prevailed last year a good car will refrigerate 525 or 550 crates of *peaches (that is the basis* by which this rate is now made), under some

conditions of weather it has been clearly established that they do not carry them in good condition, especially that top tier referred to by Mr. Hale. I have had a good deal of experience with that top tier. I have found it necessary in a good many instances, and almost entirely during some seasons, to put a special mark on every crate of peaches that goes into the car on that top tier, and have instructions to have that tier taken off and piled in the depot where they are unloaded separately and sold separately, in order that we might make a satisfactory sale of the rest of the car, admitting that they should be in good condition, whether the top tier was or not.

Now, sometimes after making the sale of the four tiers we have been able to go on and sell the other tier at just the same rate, but if it happened to be bad we would not be able to do that. Therefore, as I say, we have found it necessary to mark off that tier. But last year was a good year. The weather was dry in middle Georgia; there were no storms, and the peaches were in good, healthy condition; and although all carried well with the minimum loading, I make it a point never to load above 539 crates, while I pay freight on 550 crates.

Mr. STEVENS. How have your prices and service compared now with the time prior to the adoption of the exclusive contract?

Mr. HENDRICKSON. Well, sir, in 1898 and during the period when the field, as I might say, was open to other than the Armour lines, we paid about $80 a car for refrigeration, for refrigerator car service. Since the exclusive right has been given to the Fruit Growers' Express I believe we have been paying about $68.75.

Mr. RYAN. Do you know whether or not Armour controls any of those other private refrigerating car lines?

Mr. HENDRICKSON. I do not know, sir; I never understood that he did—not at that time, at any rate.

Mr. STEVENS. Then, so far as you are concerned, you are satisfied with the present conditions here?

Mr. HENDRICKSON. Entirely so. I have had good service, and if I should continue growing peaches I am anxious for the best service I can get and the best rates possible, and I have been entirely satisfied with the treatment and the service that I have received at the hands of the gentlemen who have represented that company at Fort Valley.

Now, our loading station is 6 miles from Fort Valley, located on the Southern Railway. The Southern Railway Company last year gave us all the facilities that we asked for in regard to moving cars. Mr. Floyd, the representative of the Armour people, who has been stationed a number of years at Fort Valley, and who I believe has had charge of icing and the distribution of the cars, has always been very ready and willing to respond to our telephone calls for a car almost any hour in the day we wanted it, properly iced. So, as I have said before, we have been able to load all of our cars and transport them in good condition.

Mr. RYAN. You are engaged entirely as a grower of peaches now?

Mr. HENDRICKSON. No, sir; my business is a commission merchant in Philadelphia as well as growing peaches in the summer season in Georgia.

Mr. RYAN. Complaint has been made that the commission business has been somewhat interfered with by the operation of the Armour refrigerator cars. What do you know about that?

Mr. HENDRICKSON. That must apply to territories I am not familiar

with. My business as commission merchant has not dealt to any extent with refrigerator-car service except in Georgia, and some business in South Carolina and Florida. We have had some business there which has always been well taken care of, and I believe at a minimum cost. So, from the position of commission merchant I have no special grievance, and certainly from the point of a peach grower I am entirely satisfied with the treatment I have received at their hands. And, further, I believe that with the business as it now is, and with the extension it is undergoing, we could not manage it unless we have equipment furnished by a large company. It would be perfectly agreeable to me to have the railroads furnish this equipment whenever they are prepared to do it. I do not believe that there is a railroad that would reach us in the South that to-day could give us the accommodations that the business demands.

Mr. RYAN. You do not want any change in the conditions that would impair any of this service you now have?

Mr. HENDRICKSON. I do not.

Mr. RYAN. And you do not want to take a chance on that?

Mr. HENDRICKSON. One of the reasons suggested by my friend at the end of the table, suggested to my friend Judge Gober, was that he wanted the business during his lifetime, and I am a little bit the same way. I believe in the trees I am growing and the peaches that mature in my time. I want to see those peaches transported, and if we speculate around too much for companies to do it I am afraid we will get left. The service we have had has been satisfactory.

I thank you, Mr. Chairman and gentlemen, for your attention.

STATEMENT OF MR. E. J. WILLINGHAM, OF MACON, GA.

Mr. Chairman and gentlemen, I am in the manufacturing business and in the fruit business. The reason I appear before you is to look after my interests in the fruit business, not for the Armour car lines, but I am here to look out for my own interests as a fruit grower.

I have three orchards—I suppose you would like to know these facts, and any questions as I go along I will be glad to answer. I have three orchards located just below Macon, 20 miles and 35 miles and 55 miles, about 20 miles apart. They are all on the Central of Georgia Railroad, just below Macon. I have about 155,000 trees in the three places. Under favorable conditions I expect to ship 75 or 100 cars of fruit this year. I have about 100,000 young trees just coming in bearing; but from this season on, with favorable conditions, I ought to ship from 150 to 200 cars a year. On two of my places I have good side tracks where I can have the cars run in, and in that way load without injuring the fruit or any trouble, and at the third place I expect to have one put in later. I understand that the Central of Georgia has been making a contract with the Armour people since 1898. Before that, I understand, it was open to all lines. That was before I went in the business. I found, though, that it was not at all satisfactory with the grower. I came into the business seven or eight years ago, and I have been dealing with Armour through the Central of Georgia ever since then. Before they made a contract with the Central of Georgia I had a special agreement with them, and they were short one day one or two cars and they sent down their agent, a very efficient man, very promptly, and they settled the claim without any trouble.

Since then I have just got the bills of lading from the Central of Georgia.

Mr. ADAMSON. Since that time you have not dealt with that company?

Mr. WILLINGHAM. No, sir; I have dealt with the Central of Georgia. They have had a contract ever since then and I have been dealing directly with them.

One of the great advantages in having this company is that they are able to furnish what cars we need. They are strong. They have icing stations at Fort Valley and Marshallville, both in a short distance of my orchard. Of course they have to go to the expense of having these houses filled with ice. At the last minute if they find that there is no fruit crop they, as well as the grower, suffer very much. But we must deal with somebody who is able to go ahead and take these risks and park these cars. If we do not, we can not wait until the last minute, because it is too late. I understand that from some of the other growers when the other lines were giving the service it was very unsatisfactory; that the cars were "bum" and that there was a good deal of loss and dissatisfaction.

I have never had a dollar's interest in any car line. I did have once, but I lost every cent and have never had any more stock in any of those companies. I am simply speaking as a peach grower.

Prior to 1898 our rate was $90 a car, but from that time until about two years ago it was $80 a car, and since then, for one or two seasons, it has been $68.75.

Mr. ADAMSON. You are a peach grower, and neither a car owner nor a broker?

Mr. WILLINGHAM. I am a manufacturer and a fruit grower.

Mr. ADAMSON. So far as your connection with the peach interest is concerned it is producing peaches, is it not?

Mr. WILLINGHAM. Yes, sir; that is all.

Mr. ADAMSON. It appears from the statement of you gentlemen here that the Georgia fruit growers are not raising any rumpus about doing anything to the fruit car lines?

Mr. WILLINGHAM. Personally it does not make any difference to me who hauls the fruit, but I think with the light before me that we had better let well enough alone until you can legislate to give us something better.

Mr. ADAMSON. You think that the Georgia peach growers, so far as you have observed, are well satisfied?

Mr. WILLINGHAM. Yes, sir; I think so. I know I am.

Mr. RYAN. Except that top tier regulation?

Mr. WILLINGHAM. I was going to remark in a minute on the top tier question; we have put in 22,500, I think, as a minimum. The top tier does not carry so well as a rule. We have that grievance.

Mr. ADAMSON. The top part of it is not so well preserved?

Mr. WILLINGHAM. No, sir. But the main grievance to my mind is a question that has not been brought up yet.

Mr. ADAMSON. What is that?

Mr. WILLINGHAM. The delays that are occasioned all along the line by the Pennsylvania Railroad and other lines that take our fruit, and the absolute impossibility of recovering one cent from those roads. If you want to do something, reach that. I have had a suit against the Pennsylvania Railroad Company for some years, and I have been

on their docks there in New York and in their private offices, and I can not get a penny from them.

Mr. ADAMSON. Then you think the only legislation that is needed in reference to private-car lines is to require all railroads to expedite these cars wherever they take them?

Mr. WILLINGHAM. I do not know that I quite catch your point.

Mr. ADAMSON. You think the main need in regard to these cars is to force all railroads to take them and shove them on?

Mr. WILLINGHAM. I think the main thing is to make them all do as well as the Armour company is doing.

Mr. RYAN. Is the service of the initial road in Georgia satisfactory?

Mr. WILLINGHAM. I think so; the service of the Central of Georgia, I think, is satisfactory. It is after it gets to Alexandria, or somewhere in this country, that it is unsatisfactory. I know I keep my representative in New York the entire fruit season, about six weeks, so I can keep in touch with the market every morning. In that way I am kept posted, and I know absolutely the condition of every car that goes in. Every year I have a man who is there on the dock every night at 1 o'clock, when the bell is tapped, and watches things. In that way it enables me to know the condition in which that fruit is received; and he also knows how the bunkers are in those cars. Now, if there is any kick, if there is any trouble, I would certainly know something about it through my representative. He represents me solely, and I keep up with it in that way.

I would like to mention here that we have to pay a good deal more freight from our section than they have to pay from the West to New York. We all know that as producers. It is a fact. We have not been able to get the rate as low. Why that is, I can not tell. The fact is that if we do not get lower rates with the increased carriage coming on I do not see how we can produce the stuff and sell it.

Mr. RYAN. That is, you refer to the competition with Michigan for the New York market?

Mr. WILLINGHAM. No, sir; I mean the rates they get from the West to the East are lower than we get from the South to the East.

Mr. STEVENS. You mean the railroad freight rates?

Mr. WILLINGHAM. Yes.

Mr. STEVENS. Or the refrigerating rate?

(No answer.)

Mr. ADAMSON. Is not that due to there being a large number of competing lines?

Mr. WILLINGHAM. I do not know why it is, but it is a fact. It works a great hardship on us, I know.

Mr. ADAMSON. And our peaches are so fine that they have to put a handicap on them, you know.

Mr. WILLINGHAM. That is the only way we can do—by giving them better quality.

If there are any other questions I would be glad to answer them.

There is one point that has been brought out, and that is in regard to the freight being taken out, the commissions, etc. I will state this: That the commissions and freights are always taken out at the other end and deducted from account of sales.

Mr. STEVENS. When you have any complaint for damages you go to the railroads, do you?

Mr. WILLINGHAM. I do not; yes, sir. The first year, as I remarked,

I had a contract with the Armour people and they promptly paid the damage done to one or two cars. Since then the Central of Georgia has made the contract with the Armour Company.

Mr. STEVENS. And you deal entirely with the Central of Georgia Railroad?

Mr. WILLINGHAM. I take their receipts, and that is all.

Mr. RYAN. And you have no complaint to make about the refrigeration or the refrigerating car system?

Mr. WILLINGHAM. None whatever. It suits me well at present, except in the respects I have mentioned.

Mr. RYAN. Except the minimum rate?

Mr. WILLINGHAM. The two points I have made, and the higher rates we have to pay as compared with western rates. I think it would be hazardous now to undertake any legislation. Armour is nothing to me any more than any other car lines, but suppose you would legislate against them and Armour would decide: "Well, we do not care to compete for this business this year." As Mr. Gober said, we will probably ship from 6,000 to 8,000 cars this year, and if Armour should say that they did not care to compete for the business, if they thought they had not been treated just right and would not go in to get the business, pray tell me where we will get the cars. How would we be able to move the crop? It would cost us thousands of dollars apiece as growers to get that crop to market.

Mr. STEVENS. I suppose it is understood that all these gentlemen appear at the request of the Armour people, to testify as to these facts.

Mr. ADAMSON. Is that true—did you appear at the request of the Armour people?

Mr. WILLINGHAM. They asked me to come, sir, as a fruit grower.

Mr. ADAMSON. I ask you whether you came at the request of the Armour people?

Mr. WILLINGHAM. Mr. Fleming, when he was in Macon some weeks ago, asked me to come.

Mr. ADAMSON. He is one of the Armour people?

Mr. WILLINGHAM. Yes.

Mr. ADAMSON. You see we have no dearth of people here representing car companies or the brokers. They have been here, and I telegraphed to Georgia to get some of the horny-handed sons of toil to come here. I telegraphed to Fort Valley to get some of you peach growers to come, and if possible I said I would rather that Armour & Co. would not pick them.

Mr. WILLINGHAM. I have no interest directly or indirectly in the Armour Company and I did my best to get out of coming here, and I asked Mr. Flemming to get Mr. S. H. Rumph or Mr. Withoft or Mr. Wright.

Mr. RYAN. Do you think you gentlemen fairly express the feeling among the peach growers of Georgia generally?

Mr. WILLINGHAM. I made some inquiry in order to answer that question in case it should be asked me, and I am satisfied from the way they spoke to me that they are satisfied with the service the Armours have given us.

Mr. STEVENS. Whose sentiments would be represented in that way?

Mr. WILLINGHAM. The different growers, sir. We have probably four or five large growers right there in Macon that have interests outside, like I have.

Mr. STEVENS. How many small growers?
Mr. WILLINGHAM. In Macon?
Mr. STEVENS. In and about Macon.
Mr. WILLINGHAM. I don't suppose there are over half a dozen growers around Macon, but most of them are quite large owners.
Mr. STEVENS. Is there any difference in the treatment of large and small growers?
Mr. WILLINGHAM. I don't think so.
Mr. STEVENS. All get the same treatment?
Mr. WILLINGHAM. Yes.
Mr. STEVENS. The same rate?
Mr. WILLINGHAM. Yes; I think so.
Mr. STEVENS. The same character of service?
Mr. WILLINGHAM. I think so.
Thereupon, at 12.40 o'clock, the subcommittee adjourned.

WASHINGTON, D. C., *February 13, 1905.*

The subcommittee met at 10.30 o'clock a. m., Hon. Fred. C. Stevens in the chair.

STATEMENT OF MR. GEORGE B. ROBBINS, PRESIDENT OF THE ARMOUR CAR LINES, AND DIRECTOR FOR ARMOUR & CO.—Continued.

Mr. ROBBINS. Shall I proceed, Mr. Chairman?
Mr. STEVENS. There are some questions which we desire to ask, but you better finish your statement, whatever you may desire to say, first, and then we will proceed to ask you questions.
Mr. ROBBINS. I will resume my statement where I left off the other day and take up some statements made before this committee by Mr. Ferguson, who I believe is the organizer of numerous associations. I will ignore most of them—of what might have happened under certain remote contingencies and his guess at earnings—feeling that such statements have no effect upon this committee, but I will endeavor to answer in detail one of each kind of his definite statements to illustrate many of a similar nature made by him.

He states that the shippers make their claims on account of refrigeration to the railways, and that Mr. Patriarch testified that they amount to practically nothing. Later in the statement Mr. Stevens asked Mr. Ferguson the question, "Do not the private car companies now hold themselves responsible to make a sort of insurance against loss or damage on account of lack of refrigeration or insufficient service?" Mr. Ferguson answered: "No, they do not; and I do not think there is any law that would hold the car company responsible for lack of sufficient number of cars or proper service."

The fact is that shippers in nearly all cases make such claims against us and we settle therefor direct with them on their merits and without the knowledge of the railways, and it is nothing to the point that Mr. Patriarch does not know of such claims, of which a number have been settled in connection with the Michigan business. To further emphasize this point I desire to say that we settled claims in California one season to the extent of over $6,000 because of temporary shortage of cars under our contract, and a like amount was paid to Georgia *shippers one season* for similar reasons.

The fact is, therefore, that we obligate ourselves to actually furnish all the cars required under exclusive contracts and hold ourselves responsible for damage in case of failure to do so, and we also pay damage for faulty equipment or faulty refrigeration.

The exclusive contracts also, as a rule, specifically provide that the car line indemnify the railroad against losses arising from claims owing to shortage of cars, condition of cars, to bad refrigeration, or failure to furnish sufficient ice, or proper icing, or refrigeration in transit, and therefore the shipper has double protection, the obligation of the car line, and the right to fall back on the railroad itself on account of the car line, if there is any greater legal hold on the railroad than on the car line itself.

In support of this I quote from paragraph 7 of the Pere Marquette contract referred to by Mr. Ferguson:

> The car line agrees to assume all liability for, and promptly adjust and pay and indemnify and save the Pere Marquette harmless from claims arising from any failure on its part to properly ice and keep iced said refrigerator cars furnished and supplied by it as aforesaid to the Pere Marquette.

He stated further that the icing is done by the railroad companies and that shipments are under the entire care and supervision of the common old-fashioned railroad campany; that the car line company simply instructed the railway station agents to note on billing "Reice when necessary;" or to instruct to reice at certain points, and they obey instructions. The fact is we furnish the ice from our own supply in nearly all cases. At many important points the railroad does not furnish us ice, but we furnish all our own supply, and sell the ice to the railroad, besides, for their use. We supply every pound of ice used in California, Georgia, the Carolinas, and Florida, and many other of the largest shipping districts; and from Georgia, Florida, and the Carolinas to New York, Boston, and so forth; for example, we supply, besides the initial ice, every pound of ice used en route from our own stations, with our own labor, superintended by our own salaried men.

We have an 18,000-ton icehouse at Toledo on the Lake Shore, and an equally large one at Columbus on the Pennsylvania Line. We have icing stations of our own at Buffalo, Albany, Altoona, East St. Louis, and probably 50 other points. We do sometimes buy ice from the roads at certain points where a small quantity is needed, and when it is obtainable from them cheaper than we could supply it ourselves.

Great stress is laid on a clause in our Pere Marquette contract for such ice as they can spare at certain points at $2 per ton. This is at a few points where the ice is cut, and where they can spare it from their storage, but it comprises only a small fraction of that supplied by us for their business, the balance coming from various points wherever obtainable to the best advantage.

In regard to his claim of our service not widening the market for Michigan peaches, or a better service being given than formerly, I have only to refer to the evidence read by me in connection with Mr. Mead's statement of five of the principal Michigan shippers, one of which being very brief, I will read it again to refresh your memory on this point. This is from the testimony of Mr. McCarthy:

> I have been in business there about forty years and have been a peach shipper, and of course we have had lots of trouble shipping peaches and getting them shipped to a distance. We had to ship them locally a great deal and met with loss. Since the

Armour car service went in we have had good success with our peaches. In 1902 I shipped 45 cars and made money on all of them. I shipped 7 by the Grand Trunk. I got the cars free and paid for the icing. I lost on all of them.

Commissioner PROUTY. Did you pay the full charge?

Mr. MCCARTHY. Yes, sir; from $35 to $50. It paid me to do it.

Mr. Ferguson figures out in detail why it would pay the roads to own their own refrigerators. I have found that the railway men figure out their own interests with a sharp pencil, and consider that it is for them to determine whether it is for their best interests to buy cars or rent them.

He makes numerous references to the freight rates on fruit, beef, and so forth, which have no bearing on car-line matters.

Mr. Patriarch, of the Pere Marquette, according to Mr. Ferguson, testifies that his company could not safely undertake to handle the fruit business originating from their lines with less than 2,500 to 3,000 refrigerators. The total average crop is from 6,000 to 8,000 cars, and the part to be refrigerated is an unknown quantity, dependent upon the weather conditions, volume of crop in the East, and so forth. Mr. Ferguson figures out on paper that 500 cars would answer. I leave it for the committee to decide whether the Michigan growers should be dependent upon the knowledge of the Michigan railway officials or the figures of the Duluth commission man.

He states that the various railways like the Chicago, St. Paul, Minneapolis and Omaha, Wisconsin Central, and others preferred to furnish cars for the Michigan business. I beg to repeat briefly the testimony of Mr. Rowley, the general freight agent, Michigan Central Railroad, on the subject:

Mr. DECKER. You used largely the M. D. T. cars on your line prior to the Armour Car Line contract for this fruit, did you not?

Mr. ROWLEY. No, sir; only to a small degree.

Mr. DECKER. What cars did you use?

Mr. ROWLEY. Such cars as we could get from connecting lines.

Mr. DECKER. Was your greatest trouble in securing cars for the fruit business as to those going to eastern points, like Boston and New York?

Mr. ROWLEY. No, sir; the difficulty did not seem to be confined to any one direction. There was trouble at all times, in all directions.

Commissioner PROUTY. Your judgment is that without a contract with the Armour company, as you are situated to-day, you would have difficulty in supplying the Michigan shippers?

Mr. ROWLEY. We consider it would be impossible.

Even if these roads were willing to supply some cars none of them were willing to agree to furnish all the cars required, even for business by their own line, and they would not consent to the cars being routed over other roads. The cars they proposed to furnish were admittedly not suitable for the peach business, and the roads would not guarantee their refrigerating qualities. If each connecting road tried to furnish its own cars, endless confusion would result in trying to get to each shipper at each of the scores of stations the kind of car wanted for a certain destination over a certain road. The fruit is frequently loaded before its destination or route is decided, and our cars are free to go to any destination by any route, thus saving the railways and shippers great trouble in getting certain kind of cars for certain business and providing a great convenience and advantage by permitting change in destination and route after loading.

Mr. Ferguson states as follows: "Now as to whether or not the carriers would furnish refrigerator cars. Many of them are doing so,

notably the Chicago, Milwaukee and St. Paul, the Chicago and Northwestern," and others. I desire to state that these roads are not examples at all of the conditions on the roads with whom we do business and make exclusive contracts. These roads do not originate fruit or berry business in any quantities or any other kind of business which we seek to handle, and we have never sought a contract with them. These railways supply refrigerators for certain year around business, such as dairy traffic, and they have no particular need of any large number of special fruit refrigerators for a short period.

Mr. Ferguson states that if it be economical to the carriers (to rent cars), the public certainly derives no benefit, because instantly upon the execution of these exclusive contracts refrigeration charges are increased from 300 to 500 per cent. The facts are that under these exclusive contracts our refrigeration charges have never been advanced, but have frequently been reduced, and our agreements with the roads do not permit any advance in our charges. He seeks to convey the impression that the advance on the Michigan refrigerator charge was chargeable to us when an exclusive contract was made. This point is somewhat emphasized as showing that we advance our rates, and it being the only case of the kind quoted, I take the liberty of repeating my answer to a similar impression created by Mr. Mead.

In 1900 we handled Michigan peaches to some extent, and our rates to Duluth were, I believe, $15. Under the railroad rule or classification previously in effect the railways paid us for or absorbed the cost of the ice used for refrigeration, and our rates were based on this condition. In 1903 the railways changed this rule and discontinued absorbing the cost of the ice. We had nothing whatever to do with this change in rule, and our profits were not increased by the increased charge for refrigeration over the previous abnormally low one. The matter of change in this rule is one of classification or freight rates, and entirely between the roads and the shippers, and the same is not chargeable to the car lines in any way. The following is an extract of the testimony of Mr. Patriarch, traffic manager, Pere Marquette railroad, to the Interstate Commerce meeting held in Chicago in June, 1904, covering this matter:

Mr. URION. During 1901 the Armour Car Line was not on your line of road, was it?
Mr. PATRIARCH. We had miscellaneous refrigerators that year.
Mr. URION. During that year you made no charge for ice, is that correct?
Mr. PATRIARCH. That is correct.
Mr. URION. You commenced making a charge for ice, did you, prior to the making of the contract in question with the Armour Car Line?
Mr. PATRIARCH. We started in 1902 making a charge for ice regardless of the contract with the Armour Company.
Mr. URION. Then the making of the cantract with the Armour Line had nothing to do with your furnishing ice free?
Mr. PATRIARCH. No, sir; it had not.
Mr. URION. There was doubtless some reason for your discontinuing to furnish ice free, was there not?
Mr. PATRIARCH. There was a good reason.
Mr. URION. What was the reason?
Mr. PATRIARCH. The cost and labor of icing made such inroads into the revenue that the railroad companies obtained, they were forced to go out of bearing that burden.

I would like to say, Mr. Chairman, in that connection, that that rule, at one time in force in Michigan, is the only case that I know of where the ice was ever furnished free by the initial road at any time. It is a practice that stands alone, and of course is referred to in one

way and another, and back and forth, as being a thing that we had something to do with. But we absolutely had nothing to do with that in any form whatever.

Mr. Ferguson states that the private car line practices for a long time were confined to the California roads, and it is probably true that the California roads and shippers have had the longest and most experience in this subject. I therefore quote from the report of the Sacramento Chamber of Commerce on this subject, made in 1903, after a lengthy and thorough investigation of the subject.

The history of the transportation of deciduous fruits to eastern markets records in its earlier days repeated failures, and at the inception the cost was so great as to make the general use of refrigerator cars practically prohibitive. These rates were gradually reduced until, in 1893, the tariff of $175 was established as the rate from Sacramento to New York on 24,000 pounds, the rates to other places being in proportion. At this time there were five refrigerator car lines operating in California, and all testimony available shows that no year passed but that there was a shortage of cars at some time during the season, occasioning thereby considerable loss to the grower. In the incessant commercial warfare carried on between these five refrigerator companies in their efforts to secure business large rebates on the refrigeration charges were made to the larger growers and shippers as an inducement for such grower or shipper to use some particular refrigerator car line. This was positively objectionable, being a gross discrimination against the smaller grower, and having a demoralizing influence in the fruit-shipping business.

The division of this fruit-shipping business between these five companies did not justify any one of them in erecting the extensive plants and putting into operation such a complete system for the refrigeration and care of green deciduous fruit while in transit as is necessary and as is now in operation throughout the United States. Such conditions prevailed until 1900, when a contract was entered into between the Southern Pacific Company and the Armour Car Line Company giving the car line the exclusive privilege of operating in California, in return for which the car line obligated itself, at all times, to provide sufficient number of refrigerator and ventilator cars to all shippers on equal terms. The rate was reduced by the Armour car line from $175 to $100 from Sacramento to New York on 26,000 pounds, and the rates to other places proportionately decreased.

Thus it will be seen that the grower and shipper of California tried for many years to secure refrigerator cars for the transportation of their products to the East, having several sources of supply to draw from, and frequently found the same inadequate to meet their wants when needed. Moreover, the service was often not to be relied upon owing to the fact that no one of the companies at that time had the necessary equipment to insure the best service, but since only one car line has been operating in California there has never been a time when there was not an adequate supply of refrigerator cars at the disposal of the grower and shipper of deciduous fruits, so that it would seem to be unwise for the fruit interests of California to desire a return to the old system. The only other means by which the fresh deciduous fruit of California could be marketed would be for the carrier—the Southern Pacific Company—to construct its own refrigerator cars, and a moment's reflection will show the impracticability of this scheme, for it would require an investment of upward of $5,000,000 on the part of the railroad company to furnish the necessary equipment to move the vast amount of California fruit, and for a good part of the year a considerable portion of the cars would lie idle on side tracks, because of the disparity between the volume of deciduous fruit shipments during the summer months and that of the citrous fruits during the winter months, as well as lack of freight during the intervening months between the two seasons, when the movement of fruit is exceedingly limited in quantity.

The construction of such a refrigerator equipment would require several years to complete, and when completed it is questionable whether such an equipment would compare favorably with the cars now handling this business, inasmuch as the cars now owned and used by the Armour Car Line Company are the result of many years' experience in the refrigerator business and are covered by many patents, and the use of such other cars would not give the grower and shipper the full assurance that these cars had not, between seasons, been put to uses which would be very detrimental to the car again being used for fruit shipping. Such an investment would not recommend itself to a business man, and the maintenance of such an equipment *would* impose an additional tax on the fruit industry not warranted by the *circumstances.*

The equipment necessary to handle this vast business, amounting approximately to 30,000 cars of fresh fruit, seemingly can best be obtained from a single car-line company, which has the ability to find use for such equipment every month in the year somewhere in the United States, Canada, or Mexico, thereby lessening the cost to the California grower, by reason of the fact that the earning capacity of the car is not diminished when California fruit loads are not available, and which insures better cars, used for fruit-shipping purposes only, better refrigeration, and more constant care than can be had where numerous car lines are operating in the same terrritory. So far as this committee can ascertain, no method obtains at present whereby safe and effective refrigeration in a large way, as required by California, can be had, except through some large system having its ramifications throughout the United States and Canada, and the Southern Pacific Company seemingly acted in the interest of the fruit grower as well as their own in making this contract with the Armour car line.

A slight digression at this point as to what refrigeration is, means, and how it is accomplished would not seem amiss. The car, before it is loaded after its long, hot, and dry trip westward, is cooled before being reloaded by having its ice tanks filled with ice. This ice rapidly melts, and must be taken into consideration as a part of the cost of the service. After the car is loaded the tanks are again filled. Contrary to the commonly conceived idea, this is not sufficient to keep the fruit in good condition until its long journey of often 3,000 miles or more, and lasting from twelve to twenty days, is ended, but has to be replenished from time to time as is needed, according to the state of the weather, nature of the fruit, and the time consumed. This necessitates the erection of ice houses and loading plants and the storing of vast quantities of ice all over the United States. The erection of these large icing plants and the conservation of the vast quantities of ice needed for this work by several companies would mean a duplication of plants and an expenditure that good business judgment would not dictate, owing to the problematic nature of the business to be done and the ice to be consumed, whereas with one company it becomes a more simple matter to estimate the necessary number of tons of ice and the cost of such work, knowing to a very close approximation the number of cars each season to be shipped.

Therefore, in the judgment of your committee, better and cheaper refrigeration can be obtained by the fruit growers and shippers of California when operating with one line, where they are sure of first-class service and constant care of their fruit from the time it leaves California until it arrives at its destination, than they could by trusting to several refrigerator companies, no one of which could afford to provide as ample an equipment and equal service.

Your committee has examined the original contract between the Southern Pacific Company and the Armour Car Line, and has carefully considered the terms thereof. This contract is a plain business instrument, which was in the interest of the Southern Pacific Company to make, because it fixes the responsibility in the event of a failure to furnish cars to the shipper when needed, and it is in the interest of the grower, because, so far as we are able to determine, it absolutely guarantees to the grower and shipper an adequate supply of ventilator and refrigerator cars whenever needed to handle their products.

The Armour Car Line has not controlled and does not and can not control the routing of a single carload by reason of their contract with the Southern Pacific Company. On the other hand, it is well known that the shipper of deciduous fruit routes his own cars, and the Armour Car Line under this contract is obligated to give every shipper proper and effective refrigeration upon equal terms, and there is absolutely nothing in the contract that could in any manner be construed as giving the car line any control over the transportation, destination, or distribution of the fruit, which they must care for and properly refrigerate whatever its destination may be or to whoever it is consigned.

That this contract is viewed as beneficial to the fruit interests of California is evidenced by the fact that the consignors of 86.47 per cent of all the fresh deciduous fruit shipped from California during the season of 1902, in a letter to the Southern Pacific Company under date of November 12, 1902, expressed themselves as follows:

"We, noting that your company has recently closed a three-year contract for the use of Armour cars for fruit shipments from California, desire to express our gratification that these carriers have decided not to make any new experiments in the refrigeration of deciduous fruits—the most perishable freight known. We feel satisfied that change of management and method in relation to refrigeration would be likely to entail serious loss on growers and shippers until the details of the operation were perfected in the course of time by the new owners, and no demand for change

which necessarily involves these chances comes from the large body of shippers most interested in the industry.

"The efficiency of the present refrigeration service has been tried and tested and found satisfactory, and we feel our interests are best served by a continuance of your present relations with the Armour Car Lines."

Mr. STEVENS. Is that from the report of the Commission?

Mr. ROBBINS. That is the report of the committee from the Sacramento Chamber of Commerce. Sacramento, as you perhaps understand, is the center of the fruit-shipping district of northern California. The question had been agitated and argued in the transportation committee of the growers and finally was referred to the Sacramento Chamber of Commerce as being an outside and disinterested party and body.

Mr. STEVENS. The transportation committee of whom—of the shippers?

Mr. ROBBINS. Of the shippers. They did not come to their own conclusions about it, but, instead of studying the matter themselves, they decided in the abstract to leave it to an outside disinterested party, and the result was the reference to this committee of the Sacramento Chamber of Commerce, who, if I remember rightly, spent some six months investigating the subject and, after that time, made this report from which I have just read you this extract.

Mr. STEVENS. When did that occur?

Mr. ROBBINS. In 1903, which was the date of the renewal of our present contract with the Southern Pacific. The investigation commenced before this renewal and was not finally finished until after it; but it was well known by the railroad company how the shippers stood on the subject and, as shown here, the shippers, before the contract was renewed, signed this suggestion that the methods then in force, the exclusive arrangement with us, was desired by them to be continued. I want to dwell on that particularly, because it is the oldest and largest fruit-shipping district in the country, and the most difficult business to handle from the fact that it has the longest distance to ship, as has already been stated. I think the cars are out from twelve to twenty days on the road.

Mr. Ferguson states that the right of routing is arbitrarily taken away from the shipper, all of which is finally chargeable to the private car-line system, and referring to some lengthy correspondence with the 'Frisco system. Later he admits, in his own statements, that the 'Frisco road could not have known what roads would perform the service of concentration at Kansas City or St. Louis of the Armour cars, and I can not compromise the two statements. The fact is that our cars are absolutely free to be used from points on any and all roads with whom we have contracts to any destination by any route, and some of the contracts have clauses to this effect. The routing lies entirely between the shippers and the railways, and we have nothing to do with it, and any effort to connect us with it is wholly unwarranted.

In reply to a direct question from Mr. Ryan, "Do the Armour car lines ship fruits?" Mr. Ferguson replied, "Yes, sir." I have previously stated at some length that the Armour car lines never have dealt in or shipped a package of fruit directly or indirectly. Armour & Co. or any other Armour interests never have dealt in fruits, with the following qualifications:

One season, as previously explained at length in my testimony, *Armour* & Co. handled between 150 and 200 cars of fruit on consign-

ment, particularly from California, at the particular request of the growers, to help market an oversupply of fruit they had on hand at the time and could not dispose of. While I admit that this may have injured the commission men to the extent of their commissions, it benefited the growers probably a hundred times as much. Armour & Co., previous to May, 1904, did deal in and handle produce to a limited extent, such as apples, potatoes, beans, etc., which commodities are not refrigerated, and as a rule were not even shipped in Armour equipment. This business was handled strictly on its own merits, the same as if Armour Car Lines had no cars, and the produce department of Armour & Co. have dropped the handling of produce, except such beans, tomatoes, apples, etc., as they may need for their own business, for putting up beans with tomato sauce, making mince-meat, etc., to which practice even a commission man can not object.

Mr. Ferguson, in reply to a question from Mr. Stevens, stated that we had some good cars, but that our line as a whole is not equal to some other lines; that there are many refrigerator cars in existence and use to-day that were built eight or ten years ago that have to a certain extent become obsolete, but are still in use; and the inference being that without competition, or under exclusive contracts, the most modern cars are not furnished. The fact is that we have no cars in service for refrigerating shipments of fruit and berries, etc., needing high-class equipment, over about 6 years old. The older cars have been retired, not because they were worn-out or unfit for business from any physical standpoint, but because newer and better cars have been introduced, in which matter we have taken the lead. As a practical car man, who has given the question of refrigerator-car construction first attention for a great many years, having supervised the designing and building of over 10,000 refrigerator cars during the last ten years, I can say that we construct the best cars that can be built, and at a greater cost than any others running. We build these cars at our own shops, to a large extent, and watch every detail with the utmost care. We are in a better position to keep furnishing new and modern cars than anyone else, because as the cars begin to get old we retire them from the fruit business, and after rebuilding them somewhat use them in our cured-meat or provision business, and later on in our ice business.

Much has been charged against us in this hearing with respect to the business originating on the Pere Marquette Railroad, almost as if that line were operated in our interests.

That business has naturally been selected for attack because it is most open to attack from their standpoint and the hardest to defend from ours.

The Michigan peach business matures late in the season, in a northern latitude, during September and October, when the weather is comparatively cool. Of the crop, amounting to some 6,000 to 8,000 cars, only one-fourth to one-third is refrigerated, the balance moving to comparatively nearby points, such as Chicago, Milwaukee, Indianapolis, Detroit, etc., indicating that any refrigeration at all is not necessary, and less perfect refrigeration is required than from any other fruit-producing section.

Situated as this business is, in a cool climate, where ice forms in the winter and is sometimes cut by certain growers, we made no effort to take care of the business until a few years ago, when some of the

Michigan growers and railways who knew of our plan of operations elsewhere came to us for equipment and service on their line, because of the difficulties before experienced by them. We were somewhat in doubt about undertaking the business, and finally made an arrangement for one or two years for part of the business in question—Grand Rapids, for instance, being at first excepted.

Later the service and conditions where we operated proved so satisfactory to the railway and the shippers most interested that the Pere Marquette extended the arrangement to cover Grand Rapids and all competitive business, and the other Grand Rapids lines followed the same plan and all the business was tendered to us because of the merit of our service. It must be plain to this committee that such roads as the Michigan Central, Grand Trunk, Pere Marquette, Grand Rapids and Indiana, and Lake Shore, and other Michigan roads do not turn their peach business over to us to refrigerate, one after another, gradually, unless our plan of operation is reasonable and meritorious and for the best interests of and with the sanction of the growers most concerned.

This Michigan peach business is less than 4 or 5 per cent of our total fruit and berry shipments, and the complaints on other business are not only conspicuous by their absence, but you have heard decided approval by the largest growers in the country.

The question of exclusive contracts has been mentioned in a great many different connections. I desire to explain for the benefit of the committee that same are not entered into by the railroads without careful consideration of the same and consultation with the majority of the influential growers. In some cases, in fact, an organization of shippers have negotiated with the various car lines direct and taken bids from them for supplying refrigeration, and after deciding on terms have requested the railroads to make an exclusive contract with the car line selected. The use of such cars and their refrigeration is therefore not forced on the shippers without their knowledge or consent, as has been intimated, but the exclusive contracts are made after consultation with the various interests most affected. This is plainly shown from the statements of the growers who recently appeared before this committee and from the statement of the Sacramento Chamber of Commerce, of which I have given an extract. Mr. Mather, in his statement, said in effect that he did not consider exclusive contracts necessary or advisable; also that he did not have to solicit business for his stock cars, but that they had applications for all the cars they could furnish. The refrigerator-car business is radically different for the reason that not only cars must be supplied, but a large amount of ice accumulated in advance, which sometimes requires six or eight months, and it is simply not a business proposition to expect any refrigerator line to agree to furnish ice and refrigeration and prepare for same without some definite assurance that their cars and ice will be used when the business moves.

I would like to say in that connection, as I previously explained, what great difficulties we had last year in Georgia. We bought all the ice in Georgia and Tennessee, and the whole South, and finally had to ship 400 carloads of ice from Lake Erie. Another season they are estimating that the crop will be from 6,000 to 8,000 cars, as compared with 5,000 cars shipped last year, and to meet the demand for these shipments, to meet these conditions, we have induced certain people

to build a new large ice plant at Chattanooga, and in order to induce them to do so we had to make a five-year contract with them. I mention that to show the utter impracticability of leaving the question open of who is to handle the business until it moves; to show you how necessary it is that it must be arranged for, not only one year in advance, but sometimes for several years in advance, to supply ice and to acquire the necessary equipment. The importance of the ice supply, I think, is frequently overlooked. It is sometimes even more difficult to get the ice than it is to get the cars, and at times after we have gotten the ice in store it is not used. On three different occasions last year we had our houses burned and had to ship ice in there from other places. What is known as the San Pedro road, Senator Clark's road, is now building from Salt Lake City to Los Angeles, and is to be finished some time during the season, nobody knows just when. They tendered us a contract, and we made an exclusive contract with them for three years, and we are now building out in the desert an ice house and manufacturing plant that will cost us $75,000. I do not know whether we will have a single car over that road this year or not.

Section 5 of the Stevens bill may be construed as fixing the rentals for the use of refrigerator cars or, if the railroads may desire to so construe it, makes it mandatory on them to pay only a certain rental at the present rate paid by one railroad to another for the use of cars, which is 20 cents per car per day. There is no distinction made between flat, coal, box, and refrigerator cars. All are on the same basis. The reason is that this is merely an arbitrary rental or per diem fixed between the railroads on a reciprocal basis for settlement of balances in the interchange of cars, so that at the end of certain periods they may strike a balance with the other roads as to the number of cars interchanged, and it is not regarded by the railroads themselves as an adequate compensation even for box cars, and would be ruinously low for refrigerator cars. If the number of cars exchanged between two roads were equal, no mileage or balance at all need be paid. If then, the power is given the railroads or it is made mandatory on them to pay to the private car companies as rental for the cars which they rent from them, only 20 cents a day, or any reciprocal rate they saw fit to fix, it is plain that the railroads might be prevented by law from paying even a just rental for private cars, which I assume is not the intention of the framers of the bill.

In conclusion I desire to emphasize the point that, as I understand it, the present law in the most sweeping way forbids discrimination by any device—through car lines or in any other way. I, however, think it is wrong to make private car companies, of which there are between 200 and 300 (some having only a few cars), common carriers, as they are not engaged in transportation, or to undertake to make refrigeration, which is a local service and at best only an incident to interstate traffic, subject to regulation.

Mr. Urion is here, and will dwell at length on the constitutional and legal phases.

There are a great many bona fide contracts in force between the railways and car companies, in all sections of the country, which run for various terms—up to seven years at least—which, together with numerous patents owned by these companies on the combination ventilator refrigerator cars, have a direct bearing on any legislation as a whole, and particularly any clause fixing mileage or rental to be paid

the car companies by the roads, which of course does not effect the shippers or the public.

Mr. STEVENS. Will you inform us first what is the relation between the Armour Car Line Company and Armour & Co., or the different divisions of the business known as the Armour business?

Mr. ROBBINS. Armour & Co. are a corporation. The Armour Car Lines are a separate corporation. The same individuals, to a large extent, own the stock of both companies.

Mr. STEVENS. What lines of business do Armour & Co. do?

Mr. ROBBINS. Armour & Co., generally speaking, engage in the packing-house business—the slaughtering and marketing of meats.

Mr. STEVENS. They do considerable other collateral business, do they not?

Mr. ROBBINS. I think only things incidental to it. We do a limited business, for instance, in butter, eggs, and poultry. Poultry, in particular, is a natural adjunct of the packing-house business. Our branch houses sell poultry and meat to the same local butchers.

Mr. STEVENS. And eggs?

Mr. ROBBINS. And eggs.

Mr. STEVENS. Now, you spoke of the canning business. How much of that does Armour & Co. do?

Mr. ROBBINS. We do a business in canned meats, in particular, and as incidental to that we put up soups and pork and beans with tomato sauce.

Mr. STEVENS. And mince-meat?

Mr. ROBBINS. And mince-meat and sausage, of course, as a part of the packing-house business.

Mr. STEVENS. Now, how much vegetable business do you do?

Mr. ROBBINS. Since May, 1904, we do not do any vegetable or produce business. Before that we did deal in vegetables, particularly apples and potatoes, to a limited extent.

Mr. STEVENS. Have you been dealing in potatoes any in the State of Michigan within the last fall and winter?

Mr. ROBBINS. No, sir; I understand not.

Mr. STEVENS. You have furnished refrigerator cars for carrying vegetables in and out of Michigan this last fall and winter?

Mr. ROBBINS. To some extent; but we have no contract with the railroad affecting the winter or potato business. If we have some cars to spare and the railroad wants them we furnish some as a convenience to both parties, but we are under no obligations to furnish them. Neither are they under any obligation to take our cars, particularly.

Mr. STEVENS. Then the Armour Company, or the Armour Car Lines Company, have not solicited consignments of potatoes from the Michigan market this last fall?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Have you solicited consignments of vegetables in the Kansas City market this last fall and winter?

Mr. ROBBINS. I am informed not. I can not answer that question as a whole, but in May, 1904, the policy was decided on of retiring from the vegetable and produce business, and to the best of my knowledge and belief that has been carried out. As I say, we have bought a few products for our own use.

Mr. STEVENS. Some person informed us that a circular was sent out by some of the Armour interests to the Kansas City markets this fall

or winter soliciting vegetables and fruits to be sold on commission in Kansas City. Do you know anything about that?

Mr. ROBBINS. Mr. Chairman, was not that an offer to take apples, in particular, on cold storage?

Mr. STEVENS. That is what I wanted to find out.

Mr. ROBBINS. I think we may have done that, not being interested in the property except as warehousemen.

Mr. STEVENS. Have you or not advertised in trade papers in the month of January last, either the Armour Packing Company or Armour & Co., and in that advertisement stated, "We handle fruits and produce for our patrons?"

Mr. ROBBINS. I am not aware of any such advertisement. The only way I know of is that we have solicited some business on storage for the account and benefit of the owner, without having any ownership in the products.

Mr. STEVENS. Then you handled them on commission, in that way?

Mr. ROBBINS. On the storage basis; on a storage basis.

Mr. STEVENS. And not on the commission basis, for selling?

Mr. ROBBINS. I do not think we sold any. I do not think we handled them except as warehouse men.

Mr. STEVENS. Now, if a circular did appear, or an advertisement did appear, of the Armour Packing Company or Armour & Co., containing this statement, "We handle fruit and produce for our patrons," what would that mean to the producers or to the trade? What would that signify? How would the trade understand these words "We handle fruit and produce for our patrons?"

Mr. ROBBINS. The inference would be there that we handled it on commission.

Mr. STEVENS. Yes. So that if that be true, if the Armour Company or the Armour Packing Company have advertised in that way, they would be in the commission business, would they not?

Mr. ROBBINS. I think the inference would be that the purpose was to handle it on commission. But so far as I know, the only thing that has been done is the offer to handle the stuff on storage, which we have always done.

Mr. STEVENS. Then this may be true; this statement that has been made to us may be true.

Mr. ROBBINS. It might be. I could not specifically deny it unless I investigated it, but I know that that general order was issued, and, as far as I know, it has been lived up to.

Mr. STEVENS. Now, if that be true, then the fruits and produce that would come into the Kansas City market over, for example, the Frisco line, which has an exclusive contract with you, would necessarily come in your cars, would it not?

Mr. ROBBINS. No, sir; our exclusive contract with the Frisco system simply covers strawberries and peaches.

Mr. STEVENS. It does not cover other fruit?

Mr. ROBBINS. Not apples or potatoes or any other kind of produce. Of course we never have handled, directly or indirectly, any shipments of fruit or strawberries, and those fruit shipments you speak of would probably not go in our cars at all.

Mr. STEVENS. They might or might not go in your cars?

Mr. ROBBINS. They might occasionally pick up one of our cars that was going back to Kansas City and ship their goods in it. But that

would not be done at our request or to our profit. The car would earn the same amount of money whether it came back empty or loaded with that produce.

Mr. STEVENS. That is, under your mileage contract with the railroad?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. At what date did you or the Armour interests send out a circular to their branches advising a discontinuance of the fruit and produce business?

Mr. ROBBINS. I think the first circular was issued in May, 1904.

Mr. STEVENS. Was not some business done in that line after that?

Mr. ROBBINS. I do not think there was. But there was some question came up on the subject, and I think the order was reissued some time in September.

Mr. STEVENS. There was another order issued in September?

Mr. ROBBINS. The order, I think, was reissued in September.

Mr. STEVENS. So that in all probability some business was done between May and September?

Mr. ROBBINS. I do not know that there was, but I might say in that connection that we have in the employ of the various Armour companies some 33,000 men, and we have several hundred branch houses, and I am sorry to say that sometimes men do not obey an order the first time it is given. If any was handled at all, it did not come to my attention, and I know that the head of the company issued a formal order to go out of that business entirely.

Mr. STEVENS. That order is in force now?

Mr. ROBBINS. Yes; and if there is anything of that kind being done, it is contrary to orders, and would be immediately stopped. I do not think it is being done.

Mr. STEVENS. Is there any complaint now against the Armour interests dealing in fruit or vegetables, before the Interstate Commerce Commission, in or out of Michigan, and engaged in rebating on that business?

Mr. ROBBINS. I do not quite catch your question.

Mr. STEVENS. Is there any complaint against you now, or against the Armour interests—any of the Armour interests—before the Interstate Commerce Commission to the effect that you are engaged in rebating in the Michigan vegetable business?

Mr. ROBBINS. No, sir; I do not think there is.

Mr. STEVENS. Is there any complaint before the Interstate Commerce Commission——

Mr. ROBBINS (interrupting). There was a case brought before the Interstate Commerce Commission, and the Commission have made a suggestion. I can not say that they have made a decision, and they certainly have not made any order. They have made a suggestion merely that the railroads and ourselves should get together and see if we can not find some way to make lower rates. That is the only thing that I know of that is pending or unsettled in regard to our Michigan matters.

Mr. STEVENS. It is a question of lower rates?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. On that point you remember the testimony of Mr. Ferguson respecting the rates in and out of Michigan before you had your exclusive contract?

Mr. ROBBINS. In a general way I do.

Mr. STEVENS. As I recall it, the testimony showed that the rates were increased after the exclusive contracts were made—the rates for icing, I mean.

Mr. ROBBINS. The refrigeration rate was increased, and I think that I have covered that point in my statement.

Mr. STEVENS. Yes; in your statement.

Mr. ROBBINS. I think I have stated why that increase was made. We did a little business in Michigan produce at that time. After our rates were increased our net revenue was not increased.

Mr. STEVENS. Why?

Mr. ROBBINS. The increase was due to the change of the rule on the part of the railroad.

Mr. STEVENS. What rule?

Mr. ROBBINS. Of the Pere Marquette, particularly.

Mr. STEVENS. I say, what rule?

Mr. ROBBINS. They previously furnished free ice. They either paid us for the ice or furnished it themselves. They changed that rule and decided thereafter to do as the roads everywhere else in the country did, to let the ice be furnished at the expense of the shipper. That caused a difference of expense to us, so that we increased our rate correspondingly and correspondingly only.

Mr. STEVENS. Is that the rule all over the country?

Mr. ROBBINS. That the shipper stands the expense of the ice?

Mr. STEVENS. Yes.

Mr. ROBBINS. Yes, sir; I think it is, universally. I do not know of anywhere where there is any other rule—that is, as to fruits and berries.

Mr. STEVENS. That is why I asked you.

Mr. ROBBINS. Yes, sir; as to fruits and berries.

Mr. STEVENS. How is it as to eggs and dairy products?

Mr. ROBBINS. In most cases the classification provides that on the articles classed as, I think it is, second class, and which will include butter, eggs, and poultry, the railroads shall furnish the ice.

Mr. STEVENS. And it is included in the rate?

Mr. ROBBINS. In the rate; yes, sir.

Mr. STEVENS. Yes.

Mr. ROBBINS. The rate is very much higher than on most of the other articles.

Mr. STEVENS. Why could not that be done as to perishable fruits and berries?

Mr. ROBBINS. I am not here to answer from the railroad standpoint, but I suppose by advancing the freight rate correspondingly it could be made to do it. We then, under our practices of handling fruits and berries, would charge less refrigeration and the railroad would charge a higher rate.

Mr. STEVENS. There is no business reason why it should not be done, is there?

Mr. ROBBINS. It is a varying and fluctuating item and I do not think it would be practicable to include it in the rate.

Mr. STEVENS. Do you think that rate would be lower on the average by making the charges that you do?

Mr. ROBBINS. Yes, sir; I do.

Mr. STEVENS. Than by including the rate in the freight?

Mr. ROBBINS. I do; yes, sir.

Mr. STEVENS. Have Armour & Co. or the Armour Packing Company or any of the Armour interests, during the year 1904, dealt in oranges?

Mr. ROBBINS. No, sir; I understand we did not. Anyway, not after May, 1904. We handled a few cars of oranges from California in 1903.

Mr. STEVENS. Was that the matter that you spoke of before in your statement?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Now, to what markets did those oranges go; do you recall?

Mr. ROBBINS. They generally went to small markets where the shippers had no facilities for marketing. I do not think any of them went to what are called auction markets, such as New York and Boston or Philadelphia. I remember one instance where we handled a car of stuff at Erie, Pa., a place which I think had never handled carloads of California green fruit.

Mr. STEVENS. Could you give us the names of some other places?

Mr. ROBBINS. We handled quite a little through the coal and coke regions of western Pennsylvania. I think at Scranton and probably Altoona and probably some of the smaller markets in particular. I think there were one or two cases where after the cars arrived at those small markets they found that they could not handle the stuff, and those cars were sent forward to some other market. But that was the plan that was carried out, as a rule, to handle that stuff at the small markets and place a part of that crop that otherwise could not be handled in those places.

Mr. STEVENS. Were these 150 carloads you have spoken of distributed around the country or mostly distributed in the East?

Mr. ROBBINS. Mostly distributed in the East; at the smaller towns.

Mr. STEVENS. In about what sized cities or towns; places of what population?

Mr. ROBBINS. About 25,000 to 50,000.

Mr. STEVENS. Did that 150 carloads include any lemons?

Mr. ROBBINS. I do not think so.

Mr. STEVENS. Did you deal in fine apples or apples of any sort during the year 1904?

Mr. ROBBINS. I think not after May, except such as we may have used in our own business.

Mr. STEVENS. How long have you been in the egg business?

Mr. ROBBINS. Armour & Co. have been in the butter, egg, and poultry business as long as I can remember. I think fifteen years anyway, and before we went into the fruit-car business.

Mr. STEVENS. You transport eggs and poultry and dairy products in your refrigerator cars?

Mr. ROBBINS. Our own products. Very rarely, if ever, the products of outside shippers. We do not solicit or do not look for that kind of business. I might say that I do know of an occasional case where the railroad has been short of cars for butter, eggs, and poultry where they picked up one of our cars and loaded it, but we do not solicit that business. We got the mileage on those shipments, and that was all.

Mr. STEVENS. That is to say, if in a market like San Francisco any of your competitors in the butter, egg, and poultry business desired to make shipments from the East they would not go in your cars?

Mr. ROBBINS. They probably would not.

Mr. STEVENS. They would go in the cars of the railroad companies?

Mr. ROBBINS. In any cars that were available.

Mr. STEVENS. Then you do not use your dairy, poultry, and egg cars for the fruit business?

Mr. ROBBINS. No, sir; the butter, eggs, and poultry are loaded in the same cars as our beef, and it is the exception when one of our fruit cars is loaded with butter, eggs, or poultry. But if we were short of another car, and one of the fruit cars was convenient, it might be used. But the rule is to load the butter, eggs, and poultry in the beef cars.

Mr. STEVENS. Then, if you sent a fruit car to California it would go empty, would it not?

Mr. ROBBINS. They generally go empty. The railroads sometimes load them with light, clean merchandise, but most of them go empty.

Mr. STEVENS. And you get the mileage empty as well as loaded?

Mr. ROBBINS. Yes, sir; generally speaking.

Mr. STEVENS. Now, when you send a dairy or beef car to California, it goes loaded?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. In what shape does it return?

Mr. ROBBINS. Sometimes empty and sometimes they load it with dried fruit, sometimes with wines or some other commodities that they may have coming eastwhich are not covered by our fruit-car contract.

Mr. STEVENS. And you get the mileage for that car both ways?

Mr. ROBBINS. Yes, sir. You understand in that connection, Mr. Stevens, that the theory originally was to pay loaded mileage only at perhaps a double rate, but that created endless confusion as to keeping track of whether a car was loaded or empty, so that the compensation was divided in two and made to apply on every run, whether the car was loaded or empty, as an easier means of accounting.

Mr. STEVENS. Have you any idea of the rate of mileage, the average rate of mileage, that you secure on your cars throughout the year?

Mr. ROBBINS. The rate of mileage is generally three-quarters of a cent a mile run.

Mr. STEVENS. There are some higher than that?

Mr. ROBBINS. In limited localities we get a cent a mile on cars loaded with certain products. That is a relatively small part of the total. That is the public rate in certain localities. Everybody gets the same rate.

Mr. STEVENS. So that you calculate your rate of mileage is three-quarters of a cent?

Mr. ROBBINS. Yes, sir; generally speaking, with some few exceptions.

Mr. STEVENS. Do you get paid for actual mileage covered or any constructive mileage?

Mr. ROBBINS. Actual mileage only. In fact, where a railroad has terminal or yard outside of the city they pay the mileage only to that yard, and then the cars are brought in by a switch engine, and they do not include that mileage.

Mr. STEVENS. You told us the cost of the cars. Will you give us the cost, as you remember it, of the different sorts of refrigerator cars that you use—fruit cars, dairy cars, and beef cars?

Mr. ROBBINS. The fruit cars cost about the same, $1,100—that is, at the present time.

Mr. STEVENS. How does that compare with the cost in 1898?

Mr. ROBBINS. I think the cars cost somewhat less at that time, for the reason that they were shorter and lighter cars, as generally built then. The cars have been gradually increasing in size and in weight.

Mr. STEVENS. On what account? You say they are larger cars?

Mr. ROBBINS. One time we built the cars quite a little cheaper. They had no air brakes at one time, and no automatic couplers, and they were shorter.

Mr. STEVENS. And now you comply with the Federal law in those particulars?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Do you recall your gross receipts for mileage, say for the last year or for the year 1903, for car mileage?

Mr. ROBBINS. Was it reduced?

Mr. STEVENS. No; do you recall your gross receipts for car mileage for 1903 or 1904, or for both years?

Mr. ROBBINS. No, sir; I could not give you that.

Mr. STEVENS. In calculating the expenses what do you call the expense of operation; that is, the men whom you employ?

Mr. ROBBINS. With respect to expenses, you mean particularly, or general operations?

Mr. STEVENS. Yes. Does that include depreciation?

Mr. ROBBINS. We make a separate charge for depreciation.

Mr. STEVENS. Outside of the expense for operation?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. What is your rate that you charge off for depreciation?

Mr. ROBBINS. We figure it at 12 per cent. And, explaining that, I want to say, as I have explained in my statement already, that it is not because a car actually wears out in eight years, but because by that time it is not fit for any high-class business. It has to be relegated to some poorer-paying business and worn out there as occasion permits.

Mr. STEVENS. What has been your average annual expense for repairs?

Mr. ROBBINS. I have not any figures here on earnings and expenses, Mr. Stevens. I did not know that was coming up.

Mr. STEVENS. In case of a wreck, and your cars being destroyed or greatly damaged, who stands the loss on that account?

Mr. ROBBINS. The railroads; they are responsible to us under a code of rules known as the Master Carbuilders' rules.

Mr. STEVENS. And you operate under those rules?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. And all that you are obliged to do to your cars is to make the ordinary repairs for wear and tear?

Mr. ROBBINS. Well, practically to make all the repairs. If repairs are made by the railroads they are generally charged to us, except in case of a wreck.

Mr. STEVENS. In case of wreckage and serious injury to a car, and in case you repair it yourself, you charge it to the railroads?

Mr. ROBBINS. Yes, sir; for wreck damages the railroads pay.

Mr. STEVENS. Would you file with the committee a statement showing the gross receipts for 1903 and 1904, your expenses for operation and repair, per car?

Mr. ROBBINS. I hope that you will not press that, Mr. Chairman.

Mr. STEVENS. Why?

Mr. ROBBINS. I would like to say that as far as this committee is concerned, strictly for their private information, I think there would be no serious objection to that, but we are a private company and, I am sorry to say, have some enemies, and I do not think that we should open our books to their inspection. I want to say further that our capital stock is low and our debt is large, and I know how those things are willfully misconstrued as earnings on capital; and I want to say further that for the time we have been in the car business, while we admit making some money, we have put all that profit and a great deal more, too, back into equipment and plants, so that as to the final outcome I do not think any man could express an intelligent opinion as to how much or how little money we are making. It depends on a great many uncertainties as to the future as to what we can do with these cars. We are investing over a million dollars a year in our plants and equipment, and are borrowing more money all the time.

Mr. STEVENS. Then you do not wish to file any such statement on the ground that you are a corporation outside of our jurisdiction?

Mr. ROBBINS. I do not know that I want to refuse to do that, but I will say again that I would very much prefer not to unless it is considered very necessary.

Mr. STEVENS. I will frankly tell you that we have no power to compel you to. It is entirely optional with you. The committee has no power to compel any man to testify.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. So that it is entirely optional with you.

Mr. WANGER. Do you not think, Mr. Chairman, that it might be possible that we would ask that authority later on?

Mr. STEVENS. I do not say later on. I say right now we have no authority to compel anyone to testify.

Mr. ROBBINS. I would like to know whether it is possible to submit those figures to the committee without their being open to our competitors so that they may learn the details of our business.

Mr. STEVENS. Entirely. I would like to know concerning them, and Mr. Adamson has spoken of that. We have received a great many charges as to that business, as to the rebating and the enormous profits, and the possibility of rebating, and I think that it is to your advantage that there should be some information before this committee.

Mr. WANGER. I would be very glad to receive the information, providing you did not regard it as an implied contract on my part not to make an effort hereafter to require public information if I should conclude from the testimony otherwise taken that that ought to be done.

Mr. ROBBINS. Well, I do not want to be considered as——

Mr. WANGER. If any inference of that kind was to be drawn, I would rather not commit myself at all.

Mr. STEVENS. The committee has discussed it, and thought that they must request the information.

Mr. WANGER. Yes; I would like it very much.

Mr. ROBBINS. Well, I will certainly consider favorably your request, or suggestion, that we file such information, and particularly if there is any assurance that it will not go beyond the committee.

Mr. STEVENS. You heard what Mr. Wanger stated?

Mr. ROBBINS. Yes, sir. I have been misquoted so many times in connection with these things by competitors and the papers that I am very reluctant about giving out information. As I say, we have a small capital, and if it was shown that we paid over 6 or 8 per cent on that small capital, even if we had a large debt and a very uncertain business, it would be dwelt on in a way that I think would be very detrimental with us. It is a business of uncertainties and vicissitudes, and is hardly to be considered on the same basis as a banking business or anything that is going to continue indefinitely.

Mr. STEVENS. Has there been any difference in the cost of building fruit cars between 1898 and 1904—any difference between building fruit cars and building dairy and beef cars?

Mr. ROBBINS. Yes; I think that the cost of construction of all cars has gradually increased. We are building a little heavier and a little better car all the time.

Mr. STEVENS. About how much?

Mr. ROBBINS. Since 1898, did you say?

Mr. STEVENS. Yes, sir.

Mr. ROBBINS. I think since that time we have commenced building 40-foot cars instead of 36-foot cars, and the difference in that respect alone, I think, is $100. Then the cars are built heavier in every way. The new modern locomotives are such that the cars built over six years ago are not strong enough to withstand the shocks to which they are subjected.

Mr. STEVENS. Will you file a definite statement showing the relative cost of building refrigerator cars from the year 1898 and for last year for general packing-house products and for fruit?

Mr. ROBBINS. I am willing to do that.

Mr. STEVENS. We would like to have that information. And in that statement I wish you would state the difference in size which you already have stated, and the amount of increase in weight, and the amount of steel used.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. You operate no stock cars?

Mr. ROBBINS. We do operate a few, yes, sir; between 100 and 200 only; but we have less stock cars than we used to have, and are gradually going out of that business.

Mr. STEVENS. You stated that you had invested in various ways about $15,000,000?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. How much do you consider is invested in cars, in equipment like cars?

Mr. ROBBINS. Probably $14,000,000 of it.

Mr. STEVENS. How many cars have you?

Mr. ROBBINS. Fourteen thousand cars, approximately.

Mr. STEVENS. Divided into what classes?

Mr. ROBBINS. Well, they are almost all refrigerators. We have a few tank cars, about 125, and we have a few stock cars.

Mr. STEVENS. What are those used for?

Mr. ROBBINS. For shipments of cotton-seed oil and lard. They are used in our packing-house business almost entirely.

Mr. STEVENS. Then your cars average on your books about $1,000 apiece?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. How many repair shops have you?

Mr. ROBBINS. Our main shop is at Chicago, where we employ about 600 men. We have another shop at Kansas City, where we employ about 400 men, and in South Omaha we have one where we employ about 100 men, and we have smaller branch shops at Sioux City and Sacramento and Los Angeles and Mobile, and I suppose a dozen other places.

Mr. STEVENS. What investment does that represent?

Mr. ROBBINS. Practically three or four hundred thousand dollars.

Mr. STEVENS. You stated that you had more than 50 icing stations?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. About what investment would that represent?

Mr. ROBBINS. Well, the icing stations comprise most of the balance of our investment.

Mr. STEVENS. About a million dollars?

Mr. ROBBINS. Well, nearly that; yes, sir.

Mr. STEVENS. What is the annual cost of your ice that you use?

Mr. ROBBINS. I have no figures on that. I can generalize on it a little if you like.

Mr. STEVENS. Just approximately?

Mr. ROBBINS. I think we use about 500,000 tons per annum.

Mr. STEVENS. Is that natural ice or is most of it artificial ice?

Mr. ROBBINS. To-day in most places we use artificial ice. Most of the places where we use ice it is not formed naturally.

Mr. STEVENS. And you purchase it, as you indicated, at Chattanooga?

Mr. ROBBINS. Yes, sir; at places we have our own plants. We can not get anybody to supply the ice in certain places.

Mr. STEVENS. Of the 14,000 cars, could you tell us how many are fruit cars, how many are beef cars, and how many are general freight cars?

Mr. ROBBINS. About 8,000 of them are fruit cars and the balance are packing-house cars, most of the balance being refrigerators, including stock and tank and a few box cars.

Mr. STEVENS. That 8,000 cars includes cars only marked "Armour Car Line Company," does it?

Mr. ROBBINS. No, sir.

Mr. STEVENS. What other marks are there?

Mr. ROBBINS. The tank cars are marked "Armour tank line." The box cars are marked "Armour and Company;" and then several of our older cars we rent to breweries, and we put their names on them. Then some other outside concerns have some of our cars with their lettering on them. There are comparatively few of them, however.

Mr. STEVENS. Now, the fruit cars include those, for example, of the Continental Fruit Express, do they?

Mr. ROBBINS. I have lumped the Continental Fruit Express in with our fruit cars.

Mr. STEVENS. That is what I wanted to get at.

Mr. ROBBINS. Most of the fruit cars are lettered "Fruit Growers' Express," and some of them "Kansas City Express," and the Conti-

nental Fruit Express is a separate company; but the ownership is practically the same, and I am president of both companies, and in what I have said I have grouped both companies together.

Mr. STEVENS. About how many cars did you say were leased to brewers?

Mr. ROBBINS. We have perhaps 200 or 300 altogether.

Mr. STEVENS. And all of the cars of the Continental Fruit Express are fruit cars?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. What do you calculate as your average mileage per day that your cars are expected to earn?

Mr. ROBBINS. I think that leads right up to the same question that we were talking about before, Mr. Stevens. I have not got the figures here, and I haven't it clearly in mind.

Mr. STEVENS. You do state your mileage in some public way, do you not? You are obliged to?

Mr. ROBBINS. No, sir; I think not.

Mr. STEVENS. What taxes do you pay?

Mr. ROBBINS. We pay State taxes in pretty much every State we operate in.

Mr. STEVENS. On what basis are those taxes calculated?

Mr. ROBBINS. Generally on mileage in the State.

Mr. STEVENS. So that you have filed a statement of mileage in several of the States, have you not?

Mr. ROBBINS. I think we have; yes, sir.

Mr. STEVENS. Do you recall the mileage filed, for instance, for the State of Michigan?

Mr. ROBBINS. No, sir; I do not.

Mr. STEVENS. Or for the State of Illinois?

Mr. ROBBINS. No, sir. Those tax statements I do not handle personally.

Mr. STEVENS. I think you see the importance of our having some statement as to the average mileage that you receive, or some statement from which it can be calculated, and I, for the committee, would like to have such a statement.

Mr. ROBBINS. I will answer that the same way as the other request, that I will consider favorably giving you some information on those lines.

Mr. STEVENS. Do you run your refrigerators in the dressed beef trade as fast as or faster than the fruit cars?

Mr. ROBBINS. Practically the same.

Mr. STEVENS. Do these dressed-beef or fruit cars run as fast as or faster than stock cars?

Mr. ROBBINS. Well, no faster, and frequently not as fast.

Mr. STEVENS. How do they average, in your opinion, as to mileage right through the year, in comparison with the stock cars?

Mr. ROBBINS. I think the mileage is not very different. Of course the stock-car rate per mile is somewhat less than that of the refrigerator car.

Mr. STEVENS. I am not speaking of the mileage, but of the rate of speed.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. You calculate that the one car can make about the same number of miles as the other?

Mr. ROBBINS. In a general way, but I have no way of drawing an intelligent comparison on that. We hardly consider ourselves in the stock-car business.

Mr. STEVENS. You were not here when Mr. Reichmann testified as to the daily mileage they expected from their cars?

Mr. ROBBINS. I saw his statement, but I have not got it very clearly in my mind.

Mr. STEVENS. That would be about 90 miles a day, as I understand it?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Your cars would run as fast as that?

Mr. ROBBINS. Approximately. I think there is no way of making the comparison; and in that connection I think it is proper to explain that the fruit cars do not make as much mileage as the packing-house cars.

Mr. STEVENS. That is what I wanted to know.

Mr. ROBBINS. Because the fruit cars necessarily are delayed more or less in awaiting loading in certain sections, and there is a period of the year when we can not use them at all. We sometimes have had as high as 2,000 or 3,000 fruit cars out of service, and sometimes more than that.

Mr. STEVENS. In making your returns for taxation what mileage do you return, the miles actually traversed?

Mr. ROBBINS. Yes, sir; we comply with the statutes in the various States in that respect. I think there are hardly any two States alike. The statutes are so complicated that I have long since dropped trying to keep track of them. We have a special man who works out those statements. Sometimes we get the information from the roads, and sometimes from our own books. Sometimes the roads running through two States will report all their mileage to us, and we have no way of knowing how much is in one State, and how much is in the other. It is a complicated process. In some of the States it is not on the mileage basis, but on the number of cars.

Mr. STEVENS. On the number of cars?

Mr. ROBBINS. Yes, sir. In California it is on the number of cars in each county on a given day, whether they are loaded or empty, and we settle with every county. The taxes are very high—I think $5,000 or $6,000 in California alone.

Mr. STEVENS. You have no item of expenses of operation separate from the expenses of repairs, have you?

Mr. ROBBINS. I think that we keep our repairs separate.

Mr. STEVENS. You keep them separate?

Mr. ROBBINS. I think so.

Mr. STEVENS. Then what would the expenses of operation include, insurance?

Mr. ROBBINS. That would be one of the expenses. Yes, sir; we insure our cars. And it would include salaries and expenses.

Mr. STEVENS. Would it include field agents?

Mr. ROBBINS. What?

Mr. STEVENS. Would it include field agents, soliciting business?

Mr. ROBBINS. Yes, sir; in all our districts, and all other employees. I do not know whether it has been made clear here that on a very large part of our business—for instance, in Georgia on peaches and North Carolina on berries—we load the fruit into the cars. The growers bring the crates to the doors and our men put them in place in the

cars and strip them, separating them so that cold air circulates around each package, and that is an item of expense that amounts to about $3 a car.

Mr. STEVENS. Who collects it?

Mr. ROBBINS. The railroads for our account as part of our charge.

Mr. STEVENS. And that expense of operation would include that expense of loading.

Mr. ROBBINS. That would be one of the expenses of operation. The ice furnished, of course, would be an item, and as bearing on that I would say that we have quite a force of experienced men that we have no employment for for three or four months in the year but we keep them on our pay roll.

Mr. STEVENS. What sort of men?

Mr. ROBBINS. District men, who are particularly acquainted with icing and the distribution of cars and this loading. We find that we can not pick up men every year here and there who are competent to do that kind of work.

Mr. STEVENS. Have you any idea what amount is charged per car for operation, including these expenses, per annum?

Mr. ROBBINS. We do not get at it in that way. We keep a statement of operating expenses in connection with this fruit business for each district, showing the cost of ice, and the district men, telephone and telegraphing, and all the expenses that enter into it, and if we find that through our thrift or new arrangements we have been able to do the business more cheaply, we put down the rate. This coming season we have already decided to slightly reduce our rate in three or four different sections because we are getting a little cheaper ice and the business has increased in volume; and we insist that we only try to get a reasonable margin of profit on this refrigeration, and as soon as there are any conditions to warrant reductions we make them. In that connection I have here an abstract from the testimony of the secretary of the Georgia Peach Growers' Association at a hearing before the Interstate Commerce Commission last year, during the spring of 1904. Commissioner Prouty asked him "Is the icing charge satisfactory?"

Mr. HAZLEHURST. The icing charge is greater than on fresh beef or any other stuff that has to be handled the same way; but we are willing to pay the money for icing. In other words, if we can get the minimum reduced to what is really in the car, 400 crates, we are willing to pay $68.75 and get the icing. We do not want them to take any ice off the cars.

Commissioner PROUTY. Do you think it is worth $68 to keep those cars filled with ice? Are you satisfied that it is a reasonable charge?

Mr. HAZLEHURST. Yes, sir.

Of course the minimum is a thing that we have no connection with.

Mr. STEVENS. Then you base your charges for icing on the cost?

Mr. ROBBINS. On the cost, with a reasonable addition for profit.

Mr. STEVENS. Certainly. Do you not calculate to make an added profit out of icing to compensate for any lack of profit on mileage?

Mr. ROBBINS. As I have said, the mileage on the fruit car does not provide a reasonable remuneration, so that if we tried to do the refrigeration at bare cost and depended on the mileage we would not be in the business.

Mr. STEVENS. Then the cost of icing pays somewhat for service of the car?

Mr. ROBBINS. No, sir; I do not think that you can put it that way.
Mr. STEVENS. What is the statement?
Mr. ROBBINS. That there is no profit from the mileage from the car.
Mr. STEVENS. Where do you make your profit, then?
Mr. ROBBINS. We make a slight profit on the refrigeration.
Mr. STEVENS. All the profit that you get out of the business is out of the refrigeration?
Mr. ROBBINS. Yes, sir; practically so. It is on the fruit-car business. On a bare mileage basis I do not think that we would be in the fruit-car business.
Mr. STEVENS. How about the dairy and dressed-beef business?
Mr. ROBBINS. We are not in that except as to the shipments from our own houses, and we handle that in the same way as we handle the beef. The cars are constantly employed the year around, and there is a reasonable margin from the mileage from the cars in the packing-house business because of their constant service.
Mr. STEVENS. Then the difference in length of service makes the difference in the profit, does it?
Mr. ROBBINS. Yes, sir. Interest and depreciation is going on just the same.
Mr. STEVENS. About what percentage of the total mileage made by your refrigerator cars in the dressed-beef trade makes 1 cent a mile; do you recollect?
Mr. ROBBINS. No, sir; but generally speaking the 1-cent mileage is between the Missouri River and Chicago.
Mr. STEVENS. That represents a large traffic, does it not?
Mr. ROBBINS. It is a large traffic, yes, sir; but I would not think that it represented more than 10 or 15 per cent of the total.
Mr. STEVENS. The total of the dressed-beef trade?
Mr. ROBBINS. Yes, sir.
Mr. STEVENS. And the balance would be at three-fourths of a cent?
Mr. ROBBINS. Yes, sir; generally speaking. There is a cent a mile paid in one or two other districts.
Mr. STEVENS. Where?
Mr. ROBBINS. On shipments of beef only (not provisions), routed to Boston from Chicago via Montreal, there is 1 cent a mile paid. I will explain that in this way. The time was when there was a differential in the rate that way of 2 cents a hundred, and the mileage was three-fourths of a cent. For some reason, a great many years ago—I do not remember what it was—the plan was changed and the differential was taken off and the extra mileage paid as a substitute, so that the effect is practically the same.
Mr. STEVENS. And all of the balance of the business is on a three-quarters of a cent a mile basis?
Mr. ROBBINS. Yes, sir; generally speaking.
Mr. STEVENS. That includes the California fruit business?
Mr. ROBBINS. Yes, sir; the lines between the Missouri River and Chicago also pay a cent a mile on fruit cars.
Mr. STEVENS. But three-quarters of a cent west of the Mi ouri River?
Mr. ROBBINS. Yes, sir.
Mr. STEVENS. Both ways?
Mr. ROBBINS. Yes, sir.
Mr. STEVENS. Loaded or unloaded?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. What is the average mileage rate on box cars?

Mr. ROBBINS. The railroads pay the private car lines six-tenths of a cent. Of course the interchange between the railroads is 20 cents per car per day.

Mr. STEVENS. What do you calculate to get on your box cars?

Mr. ROBBINS. Six-tenths of a cent a mile, I think, universally.

Mr. STEVENS. And the same on stock cars?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. How many days per year do you estimate that your dressed-beef cars are kept out of active service for the sake of making repairs and for other reasons?

Mr. ROBBINS. That would be a mere guess, Mr. Chairman, but I think thirty days out of the year.

Mr. STEVENS. Then they run eleven months of the year earning mileage?

Mr. ROBBINS. I think so.

Mr. STEVENS. How about the fruit cars?

Mr. ROBBINS. The fruit cars are out of service, I think, at least three months.

Mr. STEVENS. Then three-quarters of the time they are in service?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. That makes the difference in the profits between the two?

Mr. ROBBINS. Yes, sir; from the mileage standpoint.

Mr. STEVENS. And how about the stock cars and box cars? About how do they compare in length of service?

Mr. ROBBINS. About the same as the beef cars. What few stock and box cars we have we generally use in our own service. The box cars, for instance, we have to load with fertilizer and hides, because the railroads object to having their own grain cars loaded with that kind of freight.

Thereupon a recess was taken until 2 o'clock p. m.

AFTERNOON SESSION.

The subcommittee met pursuant to adjournment, Hon. Fred. C. Stevens in the chair.

STATEMENT OF MR. GEORGE B. ROBBINS—Continued.

Mr. ROBBINS. Mr. Chairman, I would like to say a word about that Kansas City advertisement which was spoken of this morning.

Mr. STEVENS. Yes, sir.

Mr. ROBBINS. I hope that it is plain to you that I would not willfully state as a fact something that was contrary to a public advertisement.

Mr. STEVENS. You do not need to state that, Mr. Robbins. I know you would not.

Mr. ROBBINS. I do not know what you have there or what it refers to, but I would simply like to repeat this: That I, personally, as representing the two car lines, have for some time opposed any Armour interest operating in produce, and that a year ago Mr. Armour, the president of Armour & Co., issued an order to that effect to all branches

and houses. That order was renewed again in September. We have many hundred branches, and a good many thousand men employed, and some of them new men, and it is always possible that some overzealous individual will do something the effect of which is not appreciated at the moment. But I want to say again that I know if any man in the Armour Packing Company has started out again to handle produce in any way it will be stopped. I know that policy has been decided on and that it will be held to.

I would say, also, that of course that is only a side light, at best, on the car-line question. That kind of stuff is not handled in our cars, as a rule, and whatever may have been done in it is by a different corporation; and while the commission man will naturally object to it, the grower of that produce will probably commend us just as much as the commission man will censure us for whatever has been done in that direction.

Mr. STEVENS. You understand the position of this committee. We have not any right to investigate your private business; but we have a right to know whatever in your business contributes to or is a device or a scheme for rebates or gives an opportunity for rebating or discriminations of any sort, or is the basis for any sort of an unreasonable or excessive charge for interstate transportation. Under the law we have a right to inquire into all that.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. That is exactly what we are trying to do.

Mr. ROBBINS. At the same time this fact of our dealing to a very small extent—or some of the Armour houses—in these products is made a very important feature by the other side, and I want to make the point that it is a drop in the bucket on the main issue, even if all they claim is correct; but I maintain again that the policy has been decided on in good faith to go out of the produce business and that it will be maintained.

Mr. STEVENS. Do you intend to run or try to run your cars as fast as the other refrigerator companies engaged in, for instance, the beef business, such as the S. & S. Company or the Swift Company, to make as many miles a day?

Mr. ROBBINS. Generally speaking, the cars loaded with fruit and the cars loaded with beef are carried in the same trains and on the same schedules in the same district.

Mr. STEVENS. So that they make about the same speed?

Mr. ROBBINS. They make about the same speed while running; but, as explained before, the fruit cars have an off season, which is not true of the beef cars.

Mr. STEVENS. The point that I have in mind is that you run your cars about the same as the other companies run their cars, and there is no great difference as to speed?

Mr. ROBBINS. No, sir; not as long as they are in service at all. Of course, in connection with the fruit, there is not only the off season, when there is little business moving, but it is necessary also to accumulate cars, frequently a week to a month in advance, to meet the demands of the fruit business in the territory in the busy season, whereas the beef cars are generally moved in and out without much delay. It is through our thrift that the mileage referred to is obtained, even out of the beef cars.

Mr. STEVENS. Who owns the National Car Line Company?

Mr. ROBBINS. We have no interest in it.

Mr. STEVENS. You have no interest in it?

Mr. ROBBINS. No, sir As I understand, it is a separate corporation.

Mr. STEVENS. What sort of cars do they run?

Mr. ROBBINS. Packing-house cars, nearly altogether.

Mr. STEVENS. For packing-house products?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. They report to the State of Iowa for purposes of taxation the average mileage of their refrigerator cars as 300 miles a day. Do you think that is possible?

Mr. ROBBINS. I would not think that it was, Mr. Stevens. If it is, they are a good deal smarter than we are.

Mr. STEVENS. That is what I wanted to get at.

Mr. ROBBINS. But this explanation might be made in connection with that, that the cars simply cross the State of Iowa from South Omaha for eastern points, and none of the delays incident to the business are experienced in Iowa. The cars are in Iowa only while in train.

Mr. STEVENS. You state that you charge off for depreciation 12 per cent per annum on your refrigerator cars?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Is that the master car builder's estimate?

Mr. ROBBINS. No, sir. The master car builder's rule, which was formulated to cover box cars, and stock cars, and coal cars, is 6 per cent. But we figure 8 per cent on stock and box cars and 12 per cent on refrigerators.

Mr. STEVENS. That is what I wanted to get at. Now, in operating the cars, and in turning over cars to a railroad company for three quarters of a cent per mile, what do you furnish and pay; just the cars, or anything else? Do you pay the expense, for example, of lubrication?

Mr. ROBBINS. No, sir; except when a car needs lubrication when leaving our own shop. In passing over a road, the railroad furnishes the lubrication.

Mr. STEVENS. What I wanted to get at was the expense of operation, and I think that you have answered that. You could not give the average annual expense per car of the different classes?

Mr. ROBBINS. No, sir; I haven't those figures.

Mr. STEVENS. Either for repairs or operation?

Mr. ROBBINS. No, sir; I haven't those figures.

Mr. STEVENS. Could you get them and furnish them to the committee?

Mr. ROBBINS. Well, I think that should be included with my other answer on the qnestion of earnings and expenses.

Mr. STEVENS. And you do not wish to answer on that account?

Mr. ROBBINS. I prefer not to agree to furnish it at the moment.

Mr. STEVENS. Is there any difference in the cost of repairs when a car is hauled an average of 100 miles a day and the cost when it is hauled an average of 50 or 75 miles a day?

Mr. ROBBINS. Yes, sir; I would say that there would be.

Mr. STEVENS. Is there any rule about that?

Mr. ROBBINS. No, sir; I do not think there is any way of proving the difference, beyond the fact that the expense is more when it is run-

ing than when standing still, and that the faster it runs the more the expense would be, the more wheel wear there would be, naturally, and the more general wear and tear. The wear and tear on any equipment is greater the faster it runs.

Mr. STEVENS. I notice in the reports to the State of Michigan that most of the refrigerator cars there run at about the rate that the National line runs in the State of Iowa. In what way are the beef cars run through the State of Michigan—as through trains, or through business, generally?

Mr. ROBBINS. The Michigan Central and the Grand Trunk, that carry most of the east-bound beef business from Chicago, receive their loads in Chicago, and the contents of those cars are destined through Detroit or Buffalo, for instance.

Mr. STEVENS. At about what rate are the cars run through the State in that way—20 miles an hour?

Mr. ROBBINS. Well, the time from Chicago to New York is generally sixty hours.

Mr. STEVENS. Nine hundred miles?

Mr. ROBBINS. About 900 miles, which would be about 15 miles an hour.

Mr. STEVENS. Fifteen miles an hour?

Mr. ROBBINS. While they are in through trains. That, of course, refers to the loaded movement only.

Mr. STEVENS. Yes.

Mr. ROBBINS. And empty, the rate might not be a quarter of that.

Mr. STEVENS. Have you any objection to informing the committee with what railroad lines you have exclusive contracts?

Mr. ROBBINS. I have no objection whatever.

Mr. STEVENS. We would like to have a list of the lines.

Mr. ROBBINS. I can mention a good many of them, or I can send you a complete list.

Mr. STEVENS. We would like a complete list.

Mr. ROBBINS. I have no objection to that whatever.

Mr. STEVENS. Are the contracts substantially the same as the Pere Marquette contract?

Mr. ROBBINS. Generally speaking, yes, sir. I can state in a very few words the substance of them all.

Mr. STEVENS. What points of difference are there?

Mr. ROBBINS. We agree to furnish all the cars required, and suitable cars, ice, and ample refrigeration, or respond in damages in case of failure to provide any of the items mentioned. On the other hand, the railroad company simply agrees to use our cars exclusively for certain specified business for a certain period. It generally refers to berries or peaches or high-grade fruit.

Mr. STEVENS. Would you leave with the stenographer or send to the stenographer a blank contract, so that we could have an idea of the provisions?

Mr. ROBBINS. The Pere Marquette contract, so far as that is concerned, is printed in the Senate proceedings.

Mr. STEVENS. Perhaps you had better send us a copy, so that we can have a copy here.

Mr. ROBBINS. Very well.

Mr. STEVENS. How many refrigerator cars did you furnish the Pere Marquette Railroad under the terms of that contract for the year 1904?

Mr. ROBBINS. I can only speak from memory, but if I remember right that was an off year, and we handled up their line about 1,500 carloads of peaches and grapes, which probably took from 1,000 to 1,200 individual cars.

Mr. STEVENS. Was that less than previous years?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Why; was the crop smaller?

Mr. ROBBINS. It was smaller in Michigan and much larger elsewhere. For instance, Georgia had a very heavy crop last year. Delaware and some other sections had heavy crops also, and that interfered with the Michigan shipments, particularly to the Far East.

Mr. STEVENS. Is there any difference in the different months in the year as to the number of cars that are required? How many are furnished each month?

Mr. ROBBINS. In all sections?

Mr. STEVENS. No; in Michigan.

Mr. ROBBINS. Yes, sir; decidedly.

Mr. STEVENS. About how long would that be?

Mr. ROBBINS. On the business that we undertake to handle there, it all moves practically within two months—September and October.

Mr. STEVENS. So that you furnish no cars at other times of the year?

Mr. ROBBINS. Practically none. We are under no obligations to do so, and we are not really called upon to furnish any.

Mr. STEVENS. And your contract, then, only covers the fruit?

Mr. ROBBINS. The peaches and grapes moving during a period of about two months.

Mr. STEVENS. About how many cars did you furnish to the various roads with which you had contracts during the last year?

Mr. ROBBINS. Do you mean the largest number of individual cars?

Mr. STEVENS. Yes.

Mr. ROBBINS. Through individual lines?

Mr. STEVENS. Yes.

Mr. ROBBINS. I think that our largest contract is with the Southern Pacific, under which we agree to furnish them all the cars required up to 5,000 cars.

Mr. STEVENS. Did you furnish that many?

Mr. ROBBINS. I think at times we have had the full number in their service. Most of the contracts do not even provide any maximum number of cars, because we feel able to take care of all the business, whatever it may be.

Mr. STEVENS. When you furnish your list of contracts, would you please place opposite the number of cars that you furnished last year?

Mr. ROBBINS. I will approximate it; yes, sir. I do not know that we can tell it exactly.

Mr. STEVENS. State it as closely as you can.

Mr. ROBBINS. Do you mean the number of cars handled under that contract or the number of individual cars?

Mr. STEVENS. The number of cars handled under the contract.

Mr. ROBBINS. We can give you that very readily.

Mr. STEVENS. Of course, the individual cars would be hard to give?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. What is the organization known as the California Fruit Distributors' Company?

Mr. ROBBINS. I know the organization in a general way, if it can be alled an organization. I think that it is a cooperative body of the ıorthern California fruit growers and shippers.

Mr. STEVENS. They have their headquarters where?

Mr. ROBBINS. At Sacramento.

Mr. STEVENS. Do they make any contracts with you?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Have you any business relations with them at all?

Mr. ROBBINS. Not direct. We handle the business of the members.

Mr. STEVENS. Through what line?

Mr. ROBBINS. Through our fruit growers' express line and over the Southern Pacific.

Mr. STEVENS. Over the Southern Pacific?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Do you offer any special inducements for them to do business with you?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Have you ever paid them any rebates?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Or have you ever authorized any drawback, discrimination, or preference?

Mr. ROBBINS. No, sir; we have never had any business with them in any way, shape, or manner. They do not rank as a shipper. They are organized to look after the distribution of the fruits from northern California, the stated purpose, I believe, being to avoid a glut in any particular markets, with the hope of getting better prices for the producers.

Mr. STEVENS. They are a distributing company?

Mr. ROBBINS. They are a distributing company, and we do not ;ome into contact with them in any way.

Mr. STEVENS. What is the Producers' Fruit Company?

Mr. ROBBINS. That is one of the shipping companies of northern California.

Mr. STEVENS. Of the same nature as the one I last described?

Mr. ROBBINS. No, sir; that is an individual shipping company, which I think belongs to the Distributers' Association which you poke of.

Mr. STEVENS. And the Pioneer Fruit Company?

Mr. ROBBINS. They are another shipping company and a member of he Distributers, I believe.

Mr. STEVENS. And the Penryn Fruit Company?

Mr. ROBBINS. That is another, I believe.

Mr. STEVENS. Do you have any business with any one of these indiidual concerns?

Mr. ROBBINS. Yes, sir; we handle, I think, the business of all of hem.

Mr. STEVENS. Do you make any direct contracts with them?

Mr. ROBBINS. Yes, sir; I think that we have.

Mr. STEVENS. Over the Southern Pacific?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Not included in your exclusive contract?

Mr. ROBBINS. Well, it is a question whether the exclusive contract oes not cover it anyway, but we have a separate contract with some f those concerns.

Mr. STEVENS. Do you give them any advantages over other members of the California Fruit Distributors' Company?

Mr. ROBBINS. No, sir.

Mr. STEVENS. They all have the same rates and facilities?

Mr. ROBBINS. Yes, sir; under the same conditions. I think I know what you are leading up to, and if you like, I will explain it.

Mr. STEVENS. Yes; that is what I would like to know from you.

Mr. ROBBINS. It can perhaps best be explained by illustration. At Sacramento fruits, particularly pears, come up the river by boat, and are put into the cars at Sacramento. The shippers watch the fruit as it comes off the boat, and when one of them finds a car of stuff is comparatively green, and he thinks he would like to have it ripen up a little, he will give us orders to let that car run without ice to our first icing station, which is at Truckee, at the summit of the Sierra Nevada mountains, where ice is cheaper than in California. The next car he will decide it better to have iced at Sacramento, and will so order. It would be very difficult to cover that in a tariff, so that a man at the eastern destination would know whether that car was iced at Sacramento or Truckee. There would be nothing in the billing or anything else to show; so that we bill such cars at the regular Sacramento rate.

When a man orders his car run to Truckee under ventilation, it saves ice, and we get cheaper ice on top of the mountains, and we refund to the shipper the difference between the cost of the car iced and not iced, what we save by not icing it, and that car will cost less than the car which received full icing at Sacramento. It can not be called a rebate—it is an equalization. It is a method of bookkeeping. It is the most convenient way for the shipper and for us. He then has the same charges collected at the eastern end on all cars, and where there is a saving in the ice to us, he gets the benefit of it.

Mr. STEVENS. That is, in the difference of the saving in ice?

Mr. ROBBINS. Yes, sir. Our Southern Pacific contract, as indicated in that Sacramento Chamber of Commerce report which I read, is most exacting in that we shall not discriminate, and it compels us to treat all shippers alike.

I might say further, in that connection, that an occasional car is even run as far as Ogden before it is iced, and sometimes a car goes through the other way, via Bakersfield, or even runs to Los Angeles without ice, and we make an adjustment dependent on what saving in ice is performed. Further, at times, from a place named Vacaville, a local point on the Southern Pacific, shippers sometimes order their cars fully iced and sometimes not at all and sometime half iced, and we adjust with the shipper dependent on the amount of ice used.

Mr. MANN. Do you treat all shippers alike in that?

Mr. ROBBINS. All under the same conditions.

Mr. MANN. Can any shipper order a car not iced or half iced or fully iced?

Mr. ROBBINS. Yes, sir. The conditions vary so with every day and with every shipper that we do not try to cover it in our tariff. It would be impracticable to do it. But the shippers and owners of the stuff understand it as well as we do, and it is open to all alike.

Mr. STEVENS. The orders are given in advance?

Mr. ROBBINS. Yes, sir; the shipper tells our local man what he wants—a fully iced car or one not iced at all.

Mr. STEVENS. Are the Armour interests allied with or interested in any way in this California Fruit Distributors' Company? Are you a member of that concern?

Mr. ROBBINS. In no way whatever. It has been frequently charged in papers, I know, that we steered the organization, but if I had quoted more of the Sacramento Chamber of Commerce report, you would have found it decided that that charge was without any foundation, and we never had any interests in them in any shape or manner.

Mr. MANN. Either directly or indirectly?

Mr. ROBBINS. Directly or indirectly.

Mr. STEVENS. When did you purchase the interest of the Earl Fruit Company and their plant?

Mr. ROBBINS. In 1900 or 1901, I am not sure which it was, we were offered the entire properties of what was known as the Earl properties, which were the Earl Company, the Continental Fruit Express, an ice company in the mountains, and I think one or two other small companies. We offered to buy the car line and the ice company, but Mr. Earl refused to sell unless he could sell all the company's property. I was in California myself and handled the deal, and the negotiations ran over a period of about six weeks. During this time we found some other people that were willing to buy the fruit company, Mr. Gerber, of Sacramento, and his associates. Mr. Earl, though, for certain legal reasons, would not contract for one without the other in the same contract, and so we bought all the properties and took them into our name, but within a week or two—just as quick as it could be legally done—we turned the fruit company over to the people referred to, and we do not now own the fruit company; and while technically we did own it for a week or two, that is all the connection that we have had with the fruit company.

Mr. STEVENS. Your interest ceased when you turned it over?

Mr. ROBBINS. It ceased within a week or two of the time we got it. We never operated it.

Mr. MANN. You did not operate it at all?

Mr. ROBBINS. No, sir; unless you can call that interval of a week or two operating it.

Mr. MANN. Did you operate it during that interval?

Mr. ROBBINS. That was during the winter season, when they were doing very little business anyway, and the same men in charge continued along, and we gave no orders in connection with the business at all.

Mr. MANN. You did not put any new men in?

Mr. ROBBINS. No, sir. I might say in that connection, speaking of men, that we sent for one of our men to check up certain things in connection with this deal, which he did, and after he got through, the Earl Fruit Company hired that man, and he is still with them. But it was simply a coincidence, and had nothing to do with our transaction with them at all, since when he left our employ and went into theirs he had nothing whatever to do with our business. We parted company with the fruit company interests in every respect.

Mr. MANN. You say that he was not put there to represent any Armour interests?

Mr. ROBBINS. No, sir; he was not, except during the interval of our taking over these companies. He examined the books for us. He came out there as our expert and expected to go back in a few weeks,

and they rubbed up against him and liked him; and he had a boy that had some throat trouble and wanted to live in California, and they finally hired him and he stayed there.

Mr. STEVENS. Then, you have no interests in any of these fruit concerns that I have named?

Mr. ROBBINS. No, sir; none whatever.

Mr. STEVENS. And you have no voice in their management or operation?

Mr. ROBBINS. No, sir. I think that we have been charged, one time or another, with owning every fruit company in California. I think that is a correct statement.

Mr. STEVENS. Who controls the routing of the California fruit—you or the shippers?

Mr. ROBBINS. The shippers; that is, the shippers so far as we are concerned. The shippers and the railroads have had some discussion about that, but I believe that the shippers have finally gotten a Supreme Court decision in their favor. That was with respect to the orange business, the southern California business, where the railroads undertook to route the freight; but that was without any connection with us. In fact, our Southern Pacific contract specifically took away from us any right to route, and we never have undertaken to route at all.

Mr. STEVENS. Your contract provides against that?

Mr. ROBBINS. It takes that away from us, or rather gives to the shippers the right to route without any respect to our wishes.

I might call your attention to this fact, that we do business of one kind or another with practically every one of these eastern roads. If we went into California or Missouri, or anywhere else, and undertook to route business against one road and in favor of another, we would immediately be in hot water with the roads that we undertook to route the business away from. It would be the most serious thing, even if we had the right to do it. We have not the right and have not the inclination to do it. In fact, I have time and time again refused to have anything to do with the routing.

Mr. STEVENS. Do you have any arrangement for compensation for turning additional tonnage over to any one road?

Mr. ROBBINS. No, sir; we do not do it.

Mr. STEVENS. Have you ever done that?

Mr. ROBBINS. Well, there was a time long ago, but certainly not for a great many years, a period in the early days in California, when there were four or five car lines there, and the situation was somewhat mixed, and I do not think we did the same thing two days alike over there.

Mr. STEVENS. Is that arrangement in force?

Mr. ROBBINS. No, sir; there is nothing of the kind in force now, nor has there been for a great many years.

Mr. STEVENS. You neither receive nor pay anything for change of rates or change of destination for any freight?

Mr. ROBBINS. We do not.

Mr. STEVENS. About how many refrigerator cars do you assign to the California business?

Mr. ROBBINS. Our contract with the Southern Pacific provides for up to 5,000 cars, and we sometimes have that full number in their service, and I think some more at times.

Mr. STEVENS. Have you ever engaged in the vegetable and produce business at Los Angeles?

Mr. ROBBINS. Generally speaking, no, sir. I probably should qualify that by saying that previous to a year ago I think we did handle, either on consignment or by purchase, some California celery.

Mr. STEVENS. That was before the issuance of that circular?

Mr. ROBBINS. Before the issuance of that order to keep out of the produce business.

Mr. STEVENS. Have you done any of that business since?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Are you interested in any way in an organization known as the California Vegetable Union, at Los Angeles?

Mr. ROBBINS. No, sir.

Mr. STEVENS. You have no connection with or control of it?

Mr. ROBBINS. No, sir; except as they are customers of ours. We handle much of their business.

Mr. STEVENS. What proportion of the business of Southern California in that line, do you know, is controlled by that organization?

Mr. ROBBINS. Well, I do not know; but I would say the greater part of it.

Mr. STEVENS. Have you any preferential arrangement with that concern over there, or concerns operating in that territory?

Mr. ROBBINS. None whatever.

Mr. STEVENS. You have no other business connection with them than you have with other shippers in that territory?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Does the Armour Company, or any of the Armour interests, have any control of the Hammond Packing Company?

Mr. ROBBINS. Well, you are getting a little out of my specialty, but I think that some of our people do own some of the stock, either of the Hammond Company or of the holding company that owns that packing company, or owns the Hammond Company.

Mr. STEVENS. Do you know if the Hammond Company operates in the different kinds of produce that go through your cars?

Mr. ROBBINS. No, sir; I would not be a competent witness on that.

Mr. STEVENS. You do not know anything about that?

Mr. ROBBINS. No, sir; I do not.

Mr. STEVENS. Do you have any direct business with the Hammond Packing Company in the line of carrying produce?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Do you make any preferential arrangement with the Hammond Packing Company?

Mr. ROBBINS. No, sir; I do not think we do any business with them. I do not know them as a shipper or receiver in our cars. I never heard of them in that line.

Mr. MANN. They used to have a line of cars of their own.

Mr. ROBBINS. They have cars of their own. But I think it is entirely a packing-house line of cars. They have no fruit cars.

Mr. MANN. I think that is true. The Hammond Packing Company used to be located just across the State line in Indiana, and that packing business, I think, has been moved up to the stock yards.

Mr. ROBBINS. Yes, sir; I think so.

Mr. MANN. I am not sure, but it seems to me that the Armour Packing Company and the Swift Company and some more of them had absorbed the Hammond Company at one time.

Mr. ROBBINS. As I say, I think some of our interests have an interest in the stock of the company.

Mr. MANN. The old packing plant is closed up?

Mr. ROBBINS. Yes; and they have opened up at the stock yards.

Mr. MANN. Yes; they have opened up at the stock yards.

Mr. ROBBINS. Generally the Hammond Packing Company do no car business except in the handling of their own products. There may be rare instances in which they do, but from my experience I believe that to be almost a universal rule with them. I happen to know that they are frequently short of cars for their own business, and want to know if we can loan them some cars.

Mr. STEVENS. Does that company have any contract requiring the operation of your service into Mexico, so that it is a foreign service from this country?

Mr. ROBBINS. Yes, sir; our Southern Pacific contract covers a part of the business in Mexico.

Mr. STEVENS. It extends into their Southern Pacific lines?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. And the same conditions obtain there as do in this country?

Mr. ROBBINS. Yes; sir.

Mr. STEVENS. Do you have any exclusive contracts in Canada in connection with lines of this country?

Mr. ROBBINS. No, sir; I do not think we do. That, generally speaking, is not a fruit or berry producing section.

Mr. STEVENS. You run cars or have your cars run in and out of Canada connecting with other business, I presume?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Will you please state again about what proportion of your ice you get, and under what circumstances you get ice from the railroad companies, and under what circumstances you furnish your own?

Mr. ROBBINS. In practically all cases we furnish our own ice. For instance, in California, Georgia, Florida, and the Carolinas, which are the largest producing sections in which we operate, we furnish every pound of the ice we use, and from Georgia and the southeast to Boston and New York, for instance, we furnish every pound of ice en route—that is, it is furnished out of our own stations by our laborers employed by us, and superintended by the skilled men employed by us for that purpose. In many instances the railroads not only do not furnish us with ice, but we furnish them ice where they are engaged in the refrigerating business. You probably have in mind the clause in the Pere Marquette Railroad contract, in which they agree to furnish us such ice as they can spare at two or three or four stations named at a certain rate per ton. That is a very small fraction of the ice that we use, even in Michigan, and the balance of the ice we get outside, wherever we can get it to the best advantage. One year we even had to ship ice into Michigan from our own plant at Cedar Lake, Ind. We could not get the ice in Michigan. We have a large number of our own icing stations; one at Toledo of 18,000-ton capacity, and one at Columbus of about the same capacity, and upward of fifty other stations. We own the stations and handle the ice with our own men and under our own salaried superintendents.

I go into that somewhat at length because Mr. Ferguson made the point that generally the railroads furnished the ice, and we simply put on the bills of lading for the railroads to look after the icing en route. That is not practically a fact at all. At a few points, where there is not much ice used and we can buy it from the railroads to better advantage than we can furnish it ourselves, we buy it of the railroads, but that is for a very small part of the business.

Mr. STEVENS. In arranging for your refrigerating tariffs, do you consider distance in fixing rates?

Mr. ROBBINS. Generally speaking, not at all; no, sir.

Mr. STEVENS. You fix the rate on the service?

Mr. ROBBINS On the cost of the icing service, with a reasonable profit added to it. I think that was brought out here in Mr. Ferguson's testimony, about our rates being $45 from Oregon to St. Paul, and being the same from a point in Indiana to Chicago, where the first distance was ten times greater than the other, but the profit was the same to us. In one case there was plenty of ice where the business originated, and the railroad furnished free ice to St. Paul, while in the other case there were exactly contrary conditions.

Mr. MANN. What is that about a railroad furnishing free ice? Mr. Ferguson did not say that, as I understood him.

Mr. ROBBINS. In the case of the Northern Pacific the rule is to charge for the initial ice used at the loading stations, or to make the shipper or the car line, whoever is doing the work, furnish the ice. The railroad does not furnish it. The Northern Pacific, however, did furnish free ice on their line between the shipping points and St. Paul. We have our cars iced at their stations, but they do not make any charge for it. We give the shipper the benefit of that saving; so that our rate from Oregon to St. Paul appears abnormally low as compared with our rate from some other point where a different rule prevails. So that answers the question, that distance has very little to do with it. It is a question of cost and the conditions.

Mr. MANN. In other words, the Northern Pacific includes in its rate charge—in its freight-rate charge—the cost of icing, except at initial point?

Mr. ROBBINS. Yes; I think that would be one way of putting it. I do not know whether they would grant that view of it or not. But the fact is that they do not charge us for that ice.

Mr. MANN. Do they charge the shipper for it?

Mr. ROBBINS. No, sir; they do not charge the shipper.

Mr. MANN. They either include it in their original freight charge or else do it as a matter of grace and gratuitously?

Mr. ROBBINS. The Michigan roads, as has been explained, did it at one time, but they changed that rule. They also furnished the initial ice at one time. That is the only case in the country where that has been done, so far as I can remember.

Mr. STEVENS. Is there any difference in the supervision given by you to fruits and berries loaded in different places?

Mr. ROBBINS. Somewhat; yes, sir.

Mr. STEVENS. Is there any difference in Georgia on account of that condition?

Mr. ROBBINS. I will explain that if you will let me.

Mr. STEVENS. Certainly.

Mr. ROBBINS. In Georgia and the Carolinas the berries and peaches we receive at the car door and put them in place in the car and put strips between every layer of packages and nail them in place so that there is a circulation of cold air around every package. That is done at an average expense, I think, of something like $3 a car. This expense, of course, we take into account in making our rate. The railroads never load the stuff in any locality. In some places, for instance in California, the practice is for the shipper to put the fruit into the car and load it correctly and strip it. They have learned how to do it, and we let them do it and take that into account in making our rate for refrigeration, whether we load the stuff or whether we do not load it. That is a matter between us and the shipper. In one case the shipper is relieved of the charge, and in the other case it devolves on him to pay it. When he does the loading we take that into account in making our charge.

Mr. MANN. Do you make any discrimination between different localities or between different shippers in that respect?

Mr. ROBBINS. No, sir. That is not shown as a separate item on our tariff at all. It is simply taken into account. As I say, it generally costs us about $3 a car to load the cars. It varies some what in different sections. Once in a while there is a man like Mr. Hale, of Georgia, who was here the other day, who figures out what it would cost us to do that loading and asks us to allow him to do it, and I think we have been doing that in his case. Whether it costs him more or less I do not know. That is a matter of convenience, without any particular regard to whether there is a profit or loss in it. We consider that it is the same to us, and I do not think there is any difference to him. If there is a difference at all, it is a difference, perhaps, of 25 or 50 cents a car. That is not the incentive, however, in doing it. The incentive is because it is a matter of convenience. We are very glad to be relieved of loading the stuff if the shippers will do it, but in many cases they will not do it. It is a trouble and annoyance to get the laborers and to keep them to do the loading and stripping.

Mr. STEVENS. The other day some of these gentlemen testified that they made contracts with you directly and some made contracts with the railroads. Is that the plan adopted all over the country?

Mr. ROBBINS. No, sir; I think the plan is the same everywhere. The shippers, I admit, may have a little different view of whom they are making their arrangements with. For instance, Mr. Hale stated that he and the other shippers were parties to a conference with the railroad before any arrangement was made with us. Then, when it came to making the arrangement itself, it was turned over to the railroad to make it. Under that arrangement we agreed to furnish sufficient and proper cars and refrigeration. The practice is that if a man has a claim, he comes to us with it and we settle it with him. If he prefers, though, he can make his claim against the railroad, or if he has any better legal standing and wants to bring a suit, he can bring it against the railroad, and in those contracts we indemnify the railroad against those claims. So that as a matter of fact the shipper has the double recourse—on us and the railroad also.

Now, the shippers expressed a difference of opinion, as you say, as to how they got these cars, as I remember, as to whether they dealt with the railroad or with us, but the fact is, that in all cases we fur-

nished the cars to the railroad. Whether it just occurs that way to the shipper or not, I do not know. We have not any way of furnishing the cars to the shippers.

Mr. STEVENS. This gentleman on the Baltimore and Ohio Railroad up here in West Virginia testified that he dealt with that company directly.

Mr. ROBBINS. Yes, sir; he did, as regards refrigeration, and I do not know but what he said also as to the car supply.

Mr. STEVENS. Yes; he did.

Mr. ROBBINS. But as a matter of fact, he ordered the cars from the railroad, and we delivered them to the railroad at some other point, and the railroad took them to him; so that, regardless of his view, I say, I do not see how it can be regarded that we furnished him a car. We have no means of doing that. We are dependent on the railroad as an agency.

Mr. STEVENS. I asked him with whom he made the contract for the refrigerating car service and he said with the Armour company.

Mr. ROBBINS. I will explain how that peculiar condition comes up with respect to Mr. Pancake. He is about the only peach shipper from that district on the Baltimore and Ohio. He has a right to use railroad cars or any other cars that he can get; but, regardless of that, for the last several years, when he has been ready to make his shipments he has asked us to supply him with cars and refrigeration, generally naming the number of cars—100 or 200 or 225 cars—and we have said to him that we would do so; and then I think his process of carrying that out, though, is that he ordered the cars from the railroad, and we deliver the cars to the railroad, so that while in one sense he can say that he made his arrangement with us, yet it was carried out by the railroad.

Mr. MANN. I suppose that if you have an agent there with whom he deals he might very easily say to that agent that he would want your cars, and your agent would tell the railroad company to have them there, and in that respect your agent might be acting as his agent and not as your agent?

Mr. ROBBINS. Certainly; and the railroad is the agency. We have no exclusive contract with the Baltimore and Ohio. We talk with Mr. Pancake and find out what he wants, and arrange to supply those cars to him and furnish the refrigeration. It is merely a short method of reaching the same results without going through the form of an agreement and a specific contract with the railroad.

Mr. STEVENS. Do you load the cars in the State of Michigan the same as you do in Georgia?

Mr. ROBBINS. In Michigan we superintend the loading, but do not actually handle the stuff with our own laborers. We have inspectors, but not the laborers.

Mr. STEVENS. Do you charge for the inspection?

Mr. ROBBINS. No, sir; that is not a loading charge, it is a part of our general expense of operating in Michigan. We had last year in Michigan, I think, 36 men, acting as inspectors.

Mr. STEVENS. How were they distributed—how many at Grand Rapids?

Mr. ROBBINS. Our man in charge of the district was at Grand Rapids, and probably one or two assistants, and possibly one or two inspectors.

Mr. STEVENS. How many at South Haven?

Mr. ROBBINS. I think one man.

Mr. STEVENS. How many at Matawan?

Mr. ROBBINS. I think one man. I could not give you offhand the exact distribution of these 36 men. I could get that for you if there is any particular point to it.

Mr. STEVENS. Yes; I wish you would. But so far as the shipper is concerned the expense of that service is included in the refrigeration service, is it?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. That is what I wanted to get at.

Mr. ROBBINS. The convenience of this in connection with that Michigan business is this. The grower will send a half a dozen teams, or a dozen teams, to a car to load it. His teamsters will do the manual work, but they do not understand how to load the stuff so that it will carry properly, and our men are on hand to superintend it. That has proven to be the most convenient and practical method in that particular locality.

Mr. STEVENS. Do you in your contract agree to hold the railroads harmless for your own lack of equipment and negligence in refrigeration and care? Would you state the aggregate amount of claims that you paid last year for this purpose?

Mr. ROBBINS. Well, I could only guess at that.

Mr. STEVENS. Just give it approximately.

Mr. ROBBINS. I would say $25,000 or $30,000. I might say that on this year's business we have got claims in hand now from one locality on about three days' business of $20,000, where we had an ice house burned right in the midst of the season, and about 30 or 35 cars had no initial ice.

Mr. MANN. Where was that?

Mr. ROBBINS. In Idaho. We ice at Payette, Idaho.

Mr. MANN. What was the shipment there?

Mr. ROBBINS. Largely prunes, or plums. That is their principal product. They call them prunes when they are dried, I believe, and call them plums when they are green. They ship some pears from that locality, too; but mostly plums.

Mr. STEVENS. What time of the year are your schedules for refrigeration prepared?

Mr. ROBBINS. Along in the spring.

Mr. STEVENS. About this time?

Mr ROBBINS. Yes, sir.

Mr. STEVENS. Who prepares them?

Mr. ROBBINS. They are prepared in my office, and I know about them in a general way.

Mr. STEVENS. Under your supervision?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Where do you send them?

Mr. ROBBINS. We send them to our district officers, to distribute among the shippers?

Mr. STEVENS. In what way can the shippers ascertain what these schedules are?

Mr. ROBBINS. Every shipper we know gets a tariff. We send him one voluntarily. If he does not get one, he can get one by applying either to the district office or to the home office. We print from 750 to 1,000 tariffs in almost every section, and they are distributed as

widely as possible. We have no reason for not distributing them. In fact, we try to do so.

Mr. STEVENS. Do you distribute them as a convenience to the shippers, and not because you are obliged to by law?

Mr. ROBBINS. That is correct. Mr. Fleming also reminds me that we furnish the initial railroad all the copies that they want and they send them to the local agent at each shipping point with instructions to apply them. So that in one sense they are on file at the shipping point, if anyone chooses to go to the railroad agent at the shipping point and ask for them. The agent there has a copy.

Mr. STEVENS. Do these schedules prescribe a maximum rate, or the absolute rate for use throughout the season?

Mr. ROBBINS. The absolute rate.

Mr. STEVENS. Is that adhered to strictly?

Mr. ROBBINS. Yes, sir; it is never advanced.

Mr. STEVENS. Is there ever a reduction?

Mr. ROBBINS. There is at times. This coming year we have three or four localities in mind where we will make some slight reduction.

Mr. STEVENS. Is that a public reduction or a preferential reduction to be covered in the tariff? Do all shippers who take advantage of that rate get the same treatment?

Mr. ROBBINS. Yes, sir; surely. As we get a little cheaper ice or the business increases in volume so that we can do it more cheaply per car we make a reduction.

Mr. MANN. I want to call your attention to the fact that the temperature at White River this morning was 15° below zero and down in the south in Texas it was 15° below freezing, and we ought to have ice cheap this coming season.

Mr. ROBBINS. The trouble is if the ice does form down in Texas there is no place to put it. But I assure you that they never have cut any ice in Texas.

Mr. STEVENS. The charge has been made that in that case before the Interstate Commerce Commission a Mr. Watson received a large sum annually in rebates from your concern. What truth is there in that?

Mr. ROBBINS. We paid that one company some rebates in California in early days the same as we did everybody else. But I think you have not touched on the real point there if you want me to suggest it.

Mr. STEVENS. You can state what you wish to about it.

Mr. ROBBINS. I assume that you are coming to it. We did make a loan once, or Mr. Armour did, to Mr. Watson, and at the time he failed that fact came out, and they have seen fit to construe that loan, which was made to him as a banker by the parent company, as a rebate, which it never was in any sense.

Mr. STEVENS. That was not a part, then, of the car-line refrigeration business?

Mr. ROBBINS. No, sir. The car line did not make the loan and had no connection with it.

Mr. STEVENS. And whatever rebates it made were paid in another way?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. In making rebates at that time you gave shippers about the same opportunity under similar conditions.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. How long since you have ceased paying those rebates on the California business?

Mr. ROBBINS. Well, we have not paid what you might term rebates on the California business for a good many years. That is, adjustments are still made, such as I have explained, where cars are not fully iced at initial points. Those are still being made.

Mr. STEVENS. These gentlemen who were here the other day from Georgia testified as to the competition that existed there prior to the exclusive contracts. What other refrigerator lines operated in competition there?

Mr. ROBBINS. That referred to Georgia, I believe, in particular?

Mr. STEVENS. Yes, sir.

Mr. ROBBINS. There was what was known as the California Fruit Transportation Company, the American Refrigerator Transit Company, and ours, which would make three. Then I think there were two more, but I am not sure now which they were.

Mr. STEVENS. How are the rates as to refrigeration now; how do they stand now as compared to then?

Mr. ROBBINS. The rates when the five lines operated were $90. When we made an exclusive arrangement it was a part of the agreement that we would reduce the rate to $80, which we did. Since then we have voluntarily reduced it to $68.55.

Mr. STEVENS. Have any of the connecting roads in the Georgia district attempted to do any business in their own refrigerating cars?

Mr. ROBBINS. I do not think so.

Mr. STEVENS. Have they any cars that are equipped for that sort of business?

Mr. ROBBINS. Well, I want to change that answer a little. I remember one year the Louisville and Nashville road did put in some of their cars into Georgia, particularly for the cantaloupe business, and I also remember equally well that they were entirely unable to get the contents of their cars through to destination in good condition, and after they had made a few shipments in those Louisville and Nashville cars they discarded them and took our cars.

Mr. STEVENS. Do you use any of your poorer equipment or older cars on that Georgia business?

Mr. ROBBINS. No, sir.

Mr. STEVENS. You use only your best?

Mr. ROBBINS. Yes, sir; that is a very hard business to handle. As I explained in my statement, the fruit cars that we had in the service previous to about six years ago have been taken out of the high-grade fruit and berry business and replaced with new and more modern cars. That is one reason why we have to figure a high depreciation on our cars. They do not become physically unfit to run over the roads, but they do become unfit for that high-grade business after about six or seven years.

Mr. STEVENS. I rather judged from what those gentlemen said the other day that some of them had shipped their peaches to Chicago in cattle cars.

Mr. ROBBINS. I do not know what you refer to.

Mr. STEVENS. They said that they sent the cheap peaches to Chicago.

Mr. ROBBINS. Well, it is harder sometimes to handle the cheap peaches than it is the good ones, so far as the refrigeration is concerned.

Mr. MANN. Why is it that they do not send more of their produce *from the southeast*, Florida and Georgia and down that way, up to *Chicago?*

Mr. ROBBINS. Because a great many of the commodities in question are supplied to Chicago from the West, from Texas or California or the western country. For instance, Florida has just now commenced to ship celery, and Chicago gets most of its celery from the Jackson district or from California, and it is difficult for Florida to compete in that market. Generally speaking it is because stuff of the same kind is put in there from other districts nearer to Chicago. They can do better from Florida to ship to New York and Boston.

Mr. MANN. Can you make as good time from Florida to Chicago as you can from Florida to New York?

Mr. ROBBINS. Generally speaking, yes, sir. The service is about equally good.

Mr. MANN. You have two lines of road running from Florida to New York, and four or five lines running from Florida to Chicago. Does not that make any difference?

Mr. ROBBINS. Practically speaking, I do not think it does, Mr. Mann. I think the train schedules are about as fast to the West as they are to the East.

Mr. MANN. That has not been my personal experience. I have been to Florida and have shipped stuff there a great many times.

Mr. ROBBINS. In carload lots?

Mr. MANN. Yes; in carload lots. It is harder to get a thing shipped from Florida to Chicago than it is from Florida to San Francisco.

Mr. ROBBINS. We do get stuff to Chicago from Florida all the time, more or less of it, and I am not aware of any serious defect in that service.

Mr. MANN. They may give you an extra good service.

Mr. ROBBINS. Of course perishable stuff gets preferred attention. Not in answer to any question, but if you would like to hear it I want to call your attention to this Delaware berry and peach business which originates on the Pennsylvania Railroad, a road which is supposed to be as strong as any on earth and able to build cars or do anything else that it wants to. They have a large line of their own refrigerators, several thousand cars, and when the berry and peach business in Delaware comes on they tell the people that they can have their cars if they want them, but they are not equipped to furnish ice, either initially or en route, and they have the choice of using the Pennsylvania cars with such icing facilities as they can rake and scrape together, or they can use our cars at our rates, and the result is that 99 per cent, at least, of that business, and I do not know but all of it, goes in private cars.

Mr. FLEMING. One hundred per cent of it does.

Mr. ROBBINS. One hundred per cent of it is shipped in private cars. Now, they can get Pennsylvania cars, but they do not want to look after the refrigeration themselves, and we charge them just as much as we do on any other business. That is simply another example of the desire of the shippers to use our service, regardless of what they can get from the railroads. It is not a question of rate entirely. They admit that if they could get the ice and attend to the work they could get their stuff to market more cheaply in the railroad cars, but they would not get the condition, and they realize perfectly well that by paying us $5 or $10 or $15 more they may be able to save $50 to $100 on the product. That is the guiding principle, I say.

Mr. MANN. Now, you give that illustration of Delaware and the Pennsylvania Railroad. How about the Illinois Central Railroad?

Mr. ROBBINS. The Illinois Central furnish their own equipment almost entirely.

Mr. MANN. Is it satisfactory? Do they not carry a very large amount of refrigerated products?

Mr. ROBBINS. Yes, sir; and likewise the Sante Fe furnish their own cars. But both of those lines have established a sort of refrigeration bureau In fact, I do not know but the Sante Fe is a separate company; it has been so claimed. And they do the business about as we do.

Mr. MANN. Are bananas shipped in refrigerator cars?

Mr. ROBBINS. They are shipped in refrigerators, generally, but not iced. The cars are run as ventilators until the temperature gets down to about 40°, and then the ventilators are closed. The banana will turn black if it is exposed to a temperature below 40°.

Mr. MANN. Of course the Illinois Central does an immense amount of that business.

Mr. ROBBINS. Yes, and we do some of it, too, from Mobile and New Orleans. We furnish more or less cars for that business.

Mr. MANN. I spoke of the Illinois Central because they have some special connections. We saw that as we came up from Panama.

Mr. ROBBINS. Of course the banana business runs the year around, and the Illinois Central, between their business in the North and in the South, have pretty much a year around business, which warrants their building and running their own equipment. The Santa Fe road is very much in the same fix. It is a long road, and with a greatly diversified business, and they can fairly afford to own their own equipment, although I got a letter within a day or two from our California office saying that the Santa Fe road was short of cars and that we had furnished them 180 within a few days.

Mr. MANN. Where you furnish the Santa Fe cars in that way, what is the arrangement?

Mr. ROBBINS. We get a mileage, and if the cars are iced we get the refrigeration. The refrigerating is done under our supervision.

Mr. MANN. Do you get the same mileage from the Santa Fe where you help them out as you do under an exclusive contract?

Mr. ROBBINS. Yes; of course we do not furnish them cars at all unless it is convenient to do so. We might have been short at the same time, and then we would simply have told them that we had no cars to offer and there would have been no recourse on us. Mr. Fleming reminds me that the Illinois Central in the early days offered their fruit cars in Georgia and the shippers there would not use them, although they are a pretty good car. But they are not up to our standard, and they had no organization there to look after them and ice them and reice them, and the loading was confined to western points by the Illinois Central Road.

Mr. MANN. The Illinois Central covers practically all of the strawberry and fruit section of southern Illinois, does it not? You have not all the fruit cars down there?

Mr. ROBBINS. They do most of it; yes, sir. But on one of the divisions of the Illinois Central last year the cantaloupe shippers, having about 200 or 300 cars of cantaloupes, selected our cars and requested the Illinois Central to use them for their business, and they were so used, and we refrigerated that business from the Illinois Central Road,

and we gave that service at a higher rate than the Illinois Central charged; and the same people have said, within a few weeks, that they wished to renew the same arrangement for another year.

Mr. STEVENS. In letting the Santa Fe road have cars under this system that you have just spoken of the charges for refrigeration would be made by the Santa Fe in that case?

Mr. ROBBINS. They would be collected by the Santa Fe, but for our account, and we would furnish and pay for the ice.

Mr. STEVENS. But you have no icing facilities or stations on the Santa Fe road?

Mr. ROBBINS. Not now; no, sir.

Mr. STEVENS. How would you furnish that service?

Mr. ROBBINS. We would furnish the ice from our own supply in southern California and get ice from them until the cars left the Santa Fe line.

Mr. STEVENS. You would have to perform all the service the same as on the Southern Pacific?

Mr. ROBBINS. Yes, sir.

Mr. MANN. How would it be possible for you to furnish service along the line of the Santa Fe?

Mr. ROBBINS. I say, along the Santa Fe we would get the ice from them.

Mr. MANN. They would put the ice in the cars for you?

Mr. ROBBINS. Yes, sir; we would pay them for it. And then, of course, when the cars left the line of the Santa Fe road we would take them up on our own account. In this connection, on the question of our charges, we operate in California in competition with the Santa Fe rates and in Texas with the A. R. T. Company, which is the company of the Gould lines, and from Colorado in competition with both lines, and our refrigeration rates are the same as theirs, and I maintain that we get just as much profit on that business as we do on any other business, indicating that with the railroad furnishing the cars it does not follow that shippers would get any cheaper rates. We claim, at least, that they would not get as good service.

Mr. STEVENS. Do your exclusive contracts with the other lines allow the Illinois Central or the Santa Fe cars to run over and be used on these lines?

Mr. ROBBINS. They would run over the line, certainly; but they could not be loaded at their stations with a particular kind of berries or fruit specified in our contract.

Mr. STEVENS. That is, if a shipper of the railroad wanted Santa Fe or Illinois Central cars, he could not get them?

Mr. ROBBINS. No, sir.

Mr. STEVENS. But if a car was presented for running over the line it would not come within your contract?

Mr. ROBBINS. It would not interfere with it at all. The contract simply provides that our cars shall be used exclusively for certain kinds of business named originating on their lines, generally berries and fruit.

Mr. MANN. That is, the traffic originating on the line must go in your cars?

Mr. ROBBINS. Yes, sir. And I do not know whether it came up while Mr. Mann was out of the room, but there is a special reason for that.

Mr. MANN. I can see what the special reason is for it.

Mr. ROBBINS. Yes, sir; there is one.

Mr. STEVENS. The claim was made that you were compelled to reduce your refrigeration charges in Georgia owing to the fact that the prices were so low for the crop that it was necessary to reduce the charges in order to move the crop. Was that the reason?

Mr. ROBBINS. That would simply have some bearing on it. If we thought that the community was suffering and we could afford to bear a part of the burden, I think that we would be inclined to do so. Our people are charitable people.

Mr. STEVENS. You are running your line on that basis?

Mr. ROBBINS. No, sir; that is simply a side reason.

Mr. MANN. If you thought that crops would not move unless you would reduce the rate and you could reduce the rate without cost, you would naturally be forced to do so.

Mr. ROBBINS. The crop would have moved just the same, whether we charged $80 or $88.75. I do not think it would have made any difference whatever.

Mr. STEVENS. You stated this morning why you raised the refrigeration price in Michigan after you had exclusive contracts.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. What other companies were doing business in California just before you made exclusive contracts there?

Mr. ROBBINS. The California Fruit Transportation Company, the Continental Fruit Express, the Goodell Refrigerator Line, which was owned by the Northwestern Railway, and one or two other lines, the names of which I do not recollect at the moment.

Mr. STEVENS. Most of your cars in use are on the mileage basis, are they not? You depend for your compensation on the mileage?

Mr. ROBBINS. For the use of the cars on mileage.

Mr. STEVENS. On what proportion of cars do you depend on getting refrigerator charges for your car profit?

Mr. ROBBINS. The fruit cars in particular?

Mr. STEVENS. There are 8,000 of them?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. The mileage of those cars, as I take it from your testimony, pays only expenses and depreciation and interest?

Mr. ROBBINS. Yes, sir; but I put it the other way. The mileage alone on these cars does not provide a sufficient remuneration for a profit, because of the fact that they are out of service between the fruit seasons. There is also much delay to them in awaiting loading in the season. We can not run the cars into a territory just as they want them, but sometimes a great many hundred cars are there for a week, or sometimes as much as a month in advance of the movement, and since the North Carolina strawberries have become a prominent crop, about 3,000 cars come out of there in a month, and we can not get those cars in in that short period, and we commence to park cars there a month ahead.

Mr. MANN. That is, the cars are taken from all the roads and stored there?

Mr. ROBBINS. Yes, sir.

Mr. MANN. And you do not dare to wait and have faith that you can run a train of cars right through and drop it off where you need it?

Mr. ROBBINS. We haven't them available in this part of the country on short notice. We have to begin to pick cars off that come into the East to get the number required into the territory before the season is over.

Mr. MANN. Where do you keep these cars stored when they are not in use?

Mr. ROBBINS. We have a large storage yard of our own in Chicago, one in Kansas City, and one in Omaha, and then we have storage yards in some of these loading localities. For instance, if we have idle cars and they are going to be needed next in California, we drift them along and let them wait, sometimes in our own yards and sometimes in the railroad yards. It is the most convenient way to handle them.

Mr. MANN. Do you have to pay any storage for them if they are in a railroad yard?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Whom do the Hoster refrigerator cars belong to?

Mr. ROBBINS. That is a line of beer cars and the cars belong to us.

Mr. STEVENS. And how about the Plankington company?

Mr. ROBBINS. We had some cars in that service, but we have not any now.

Mr. STEVENS. You have not now?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Then how about the Barbarossa refrigerator line?

Mr. ROBBINS. That is a line of cars that belong to us. I might explain in regard to those cars. They are fruit cars or beef cars that are more than six or eight years old and are not considered suitable any more for that business. We take out the tanks and paint them up to suit these brewers, and lease them to them.

Mr. STEVENS. On an annual lease or a mileage basis?

Mr. ROBBINS. Generally on a monthly basis.

Mr. STEVENS. That is a special contract with the brewing company?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. How about the Dubuque Refrigerator Car Company?

Mr. ROBBINS. That is another beer line belonging to us.

Mr. STEVENS. And the Heintz Pickle Company?

Mr. ROBBINS. That is a pickle line belonging to us.

Mr. STEVENS. You have quite a number of those?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Are these all included in that number that you gave this morning?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. That is all that I have to ask now. I trust that you will furnish that information in such shape as you see fit to, and as much of it as you see fit. The committee will be very glad to have it.

Mr. ROBBINS. All right, sir.

Mr. STEVENS. We have asked of Mr. Robbins, Mr. Mann, information as to the capitalization and earnings, mileage earnings, expenses, and matters of that sort, which he declined to give us, I regret to say, on the ground that they were his private business, and the committee requested me to ask of him what I have just asked, so that those matters would be a matter of record.

Mr. ROBBINS. If you will allow me to explain for Mr. Mann's benefit: I said in that connection that while we might have no objec-

tion to furnishing this committee some information on that line, if it should be confined to the committee and not go out to the public, I thought that we might be inclined to do it; but I am sorry to say that we have some enemies and I do not think it is right for us to submit the results of our private business to public scrutiny, for business reasons. I think anybody would feel the same way about it.

Mr. MANN. Is not the information that we ask for given in all of your annual reports?

Mr. ROBBINS. No, sir; we do not make any.

Mr. MANN. What?

Mr. ROBBINS. We do not make any.

Mr. MANN. Have you any stockholders?

Mr. ROBBINS. Yes, sir; but it is a close corporation, and they are all in the family; and, as I explained, so far as any earnings and dividends are concerned, every year we put back into the business more than we make out of it. It has been a growing business, and the equipment has had to be largely increased and it has taken a great deal of money, and in one sense there have been no dividends, and I do not see how there are going to be for the present. We are putting more in the business all the time.

Mr. MANN. Do you have any bonded indebtedness?

Mr. ROBBINS. Yes, sir; we have a small capitalization and a large debt. We borrow money from our own people.

Mr. MANN. Where you have gone into the refrigeration of fruit, in localities like Georgia and Florida and Michigan, what has been the tendency with regard to growth of the business?

Mr. ROBBINS. It has grown very rapidly. When we commenced to do business in Georgia under the exclusive contract, I think we had 500 or 1,000 cars. How many did you say we had the first year, Mr. Fleming?

Mr. FLEMING. In 1898?

Mr. ROBBINS. Yes.

Mr. FLEMING. That was the big year until last year. We jumped right into that the first year.

Mr. ROBBINS. Yes; last year it was up to 5,000 cars.

Mr. FLEMING. The acreage in fruit has been increasing.

Mr. ROBBINS. The gentleman testified here the other day that under favorable conditions next year there would be from 6,000 to 8,000 cars out of Georgia, and the strawberry business of North Carolina is the same way. We started in there five years ago, I think, and there were about 700 or 800 cars, and this last year there were 2,300 or 2,400 cars over the Atlantic Coast Line alone, and about 300 cars over the Seaboard Air Line. The business has been increasing very fast.

Mr. STEVENS. The business has not been increasing that way in Michigan?

Mr. ROBBINS. It has not been increasing very much.

Mr. MANN. There was a very large increase of shipments, according to Mr. Ferguson, by car.

Mr. STEVENS. It was not delivered outside to connecting lines.

Mr. MANN. I think the chairman of the subcommittee is mistaken about that.

Mr. ROBBINS. Michigan is an old district and has not increased with the leaps and bounds with which these two outside districts have increased.

Mr. MANN. In Michigan in 1900, according to Mr. Ferguson, the total number of cars shipped was 4,360.

Mr. ROBBINS. That was on the Pere Marquette line alone.

Mr. MANN. And in 1903 that number had grown to 7,825.

Mr. STEVENS. Now, look at the number outside of the State.

Mr. MANN. The number of interstate cars, under refrigeration, in 1900 was 1,435, as against 1,632 in 1903. But Mr. Ferguson figured that the interstate traffic did not include shipments to Chicago. Now, the Pere Marquette Railroad did not run into Chicago at all at that time, and Chicago is interstate traffic. So that his statement on that was like some of his other statements, slightly erroneous.

Mr. STEVENS. I had in mind that the number of cars shipped in interstate traffic was not very much increased.

Mr. MANN. According to your judgment, the tendency is to build up the business?

Mr. ROBBINS. Decidedly.

Mr. MANN. Where you go in and furnish the facilities for shipment?

Mr. ROBBINS. Decidedly. In all large districts where we operate the business has doubled and trebled and quadrupled.

Mr. MANN. You speak of the large increase. What facilities do you furnish in districts where the shipments are smaller?

Mr. ROBBINS. We take care of almost any business offered to us if it is offered to us in time so that we can provide equipment for it.

Mr. MANN. Supposing a community wants to ship vegetables from Arkansas where vegetables have not been shipped from prior to that time; how would they get into communication with you or some other car line?

Mr. ROBBINS. The way it generally comes up is that the shippers take it up with the railroads or with our representatives, or the railroads bring it to us, or our district men. I call your attention to a case that came up before us a month ago. There is a little new road built down near Corpus Christi, Tex., where we are going to have about 50 cars of cabbages. We never shipped a car there before. That is a new thing down there, and there is no road there that has the means of taking care of it. They offered it to us at the eleventh hour, and we told them that we would take care of it if we could get ice anywhere within 200 miles.

Mr. MANN. Do you ice cabbages?

Mr. ROBBINS. Yes, sir; generally we do not, but these cabbages shipped at that time of the year from down there we are going to ice.

Mr. MANN. What do you do about shipments from Florida? They used to raise a great many strawberries and bring them from Florida. Most of those growers went out of business fifteen year ago because, I suppose, the Armour car line was not in existence there at that time, or anything like it. How about that?

Mr. ROBBINS. Our Florida man is right here, if you care to hear very much detail about that Florida business. But in a general way our Florida business has doubled and trebled within the last few years. Up to the time of this freeze, two weeks ago, we were getting from 20 to 25 cars a day of lettuce alone out of there. Of course that cold weather put that back again. The strawberry business from there has been increasing very rapidly, and Mr. Fleming just called my attention to the fact that the first year or two we operated in Florida

we had what he calls "red ink figures." That is, we did not come out even on the business. We worked along on the business that way until it grew to a sufficient volume so that it has paid us something.

Mr. MANN. I can remember when I first commenced to visit in Florida, around Palatka, one winter they raised immense quantities of strawberries and other small fruits. They quit because they paid high express charges to get their fruits to the markets, and when it got to the markets it was spoiled, and of course it did not take many seasons of that to take the ardor and enthusiasm out of the people.

Mr. ROBBINS. Our business in Florida for the last few years has increased decidedly and every year, I think without exception, until we are doing a very nice Florida business now.

Mr. STEVENS. Has your Pacific coast business increased?

Mr. ROBBINS. Yes, sir; very much.

Mr. MANN. You spoke of Idaho a while ago.

Mr. ROBBINS. We started there a few years ago with nothing, and I think now that business runs up to 600 or 800 cars a year.

Mr. STEVENS. How about Colorado, has it been increasing there?

Mr. ROBBINS. Colorado has had a decided increase in the peach business. From the Grand Junction section, I think last year we handled 400 or 500 carloads, where a few years ago there were none at all.

Mr. STEVENS. Do you handle the melon business?

Mr. ROBBINS. No, sir. The center of that is Rocky Ford, a local point on the Santa Fe, and they handle their own business.

Mr. STEVENS. How are watermelons shipped?

Mr. ROBBINS. In stock cars, and the more air they can get the more they like it. My attention is called to the fact that people of northern Florida are beginning to plant peaches.

Mr. MANN. Oh, they began years ago. I have an orchard in Florida that is 20 years old, and the peaches rot on the ground every year.

Mr. ROBBINS. We are figuring on quite a large business out of there.

Mr. STEVENS. Where do you send them to?

Mr. ROBBINS. To New York and Boston.

Mr. FLEMING. They are the first peaches in the market here?

Mr. MANN. Yes; they are very high priced, and they are very fine peaches. How about northern Alabama? That is getting to be quite a fruit country.

Mr. ROBBINS. We handle a few peaches off of the Louisville and Nashville. We furnish cars for all the Louisville and Nashville peach and berry business. They have a number of different sections, some of them in Alabama, and some in Tennessee.

By the way, the Louisville and Nashville built a thousand cars some six or eight years ago to handle that business, and they did handle it in a way; but a few years ago they offered all the business to us and we are taking care of it.

(Thereupon, at 3.50 o'clock p. m., the committee adjourned.)

THURSDAY, *February 16, 1905.*

The subcommittee was called to order at 2.20 o'clock p. m., Hon. Fred. C. Stevens in the chair.

STATEMENT OF THOMAS B. FELDER, JR.

Mr. SHACKLEFORD. You may proceed, Mr. Felder. State your name and whom you represent.

Mr. FELDER. I practice law in the city of Atlanta and am engaged, to some extent, in agriculture in the State of Georgia and in the State of Indiana. By way of preface, I desire to disclose my relation to the subject-matter under discussion. I have, for quite a number of years, represented the Armour interests as attorney in Georgia.

Mr. SHACKLEFORD. The Armour Packing Company?

Mr. FELDER. The various Armour interests. There are several corporations and I represent them in their litigations. I appear here, however, in behalf of several very prominent peach growers in the State of Georgia, who requested me to come on and call to the attention of the committee, as to this Stevens bill under consideration in the House, and the Elkins bill under consideration in the Senate, the particular way in which these measures, if enacted into law, will, in their judgment, affect the peach and vegetable industry in the South. I have been here for two or three weeks, and before coming I took occasion to investigate this question very thoroughly and I find that, so far as the producer of peaches and vegetables is concerned, and so far as the consumer is concerned, and so far as the transportation lines are concerned, everybody seems to be satisfied.

In other words, we occupy very much the position of the old negro woman who died in Georgia, and when it was asked what the complaint was it was said that there was no complaint, everybody seemed to be satisfied. Since my arrival in the city of Washington I find that there is some complaint, and the complaint is quite general; and it comes from the middle man, who is known as the commission merchant or broker. These middle men, until the present system was brought in vogue, have lived as parasites upon this industry, and whatever else may be said in regard to the present system of private car lines, I think we can claim with confidence that the car lines have assisted much in regulating this parasite or barnacle that had fed upon the peach growers and fruit growers from the South since the business began.

Now, gentlemen, I propose to lay down two propositions. First, that the Federal Congress, under the method pursued by the private car lines, has no jurisdiction whatever over the subject-matter. The fact that the Federal Congress has a right to regulate interstate commerce must be conceded; but under the contracts, exclusive or otherwise, made between the car companies and the railroad, they are not only not engaged in interstate commerce, but they are not the agencies of interstate commerce, and they do none of the things that constitute interstate commerce.

Mr. SHACKLEFORD. How would they be affected if you should require that railroads themselves should furnish refrigerator cars and other improvements?

Mr. FELDER. I want to say that a great many gentlemen have testified here and announced that they did not want to be interrupted until they had gotten through. I will say, however, that I want to be interrupted at any time, and I am glad that I will have a chance to answer that question. It is not contemplated by this bill that each railroad shall furnish these refrigerator cars and the icing.

Mr. SHACKLEFORD. I understood it was. I understood that it shall be the duty of every carrier to furnish every means and facility for the shipper, every requisite for the safety and preservation of fruit and such products in transit.

Mr. FELDER. I have not so read the bill. My understanding is that the provisions of this bill declare that those people who are engaged in furnishing private car lines, common carriers, are put under the interstate-commerce act; and there is a provision that they shall not charge more for their cars than is charged upon the interchange of cars between railroads.

Mr. STEVENS. That is correct.

Mr. SHACKLEFORD. Is not there a clause that there shall be an obligation upon the part of the car company to provide for the safety and preservation of the products?

Mr. FELDER. There was a man appeared here by the name of Mr. Ferguson, and when I saw him appearing in the Senate committee I thought he was a Senator. He has consumed about all the time in the House and the Senate committees—if the passage of this bill will afford no remedy, you ought to go a step further. There is a law requiring every railroad in the country to furnish its own equipment.

Mr. STEVENS. Before you leave that you will consider the second section of the bill, will you not, providing that all instrumentalities of transportation like refrigeration shall be considered a part of the contract with the carrier——

Mr. FELDER. Yes, sir; I will do that. Now, I want to state this. This gentleman states somewhere that he was simply loaded down with petitions, and from the number of petitions that he has received addressed to this committee and to Congress, the lower House and the Senate, it was sufficient almost to make him bow-legged if he carried them about the corridors from one committee room to another. I don't know how these petition purposes operate in this country, but we have a notable example in the efficacy of popular petitions in our State. I think it occurred in the town of Mr. Adamson, where every man, woman, and child petitioned the mayor and the council to build a shed to protect the sundial from the rays of the sun. It is a matter of common knowledge that you can get petitions signed to do anything and by anybody.

Now, let us see. Suppose each railroad in the United States should be required to furnish this equipment. Let us assume that you should pass an act, as suggested by the chairman, who has just retired, requiring each railroad to furnish refrigeration and all of the incidentals to the transportation of fruit and vegetables. Now, I don't know how it may be in the chairman's district and in the chairman's State, but we have some railroads that you could probably denominate monopolies in the State of Georgia. For instance, you take the Lexington Terminal, a road that is officered and owned by the Congressman from that district and by a lawyer residing in the city of Lexington, namely, Judge MacWhorter. That road is 4 miles in length.

It originates in the city of Crawford, a city of probably 250 inhabitants, and it runs to Lexington.

The price that you would have to pay for the building of that road, the engines, and all the equipment is about the price of two or three of these private cars. Now, I am told that of peaches, watermelons, and vegetables, at least four or five hundred carloads originate and are transported over that line of road. If you should string along on that road one car after another you could not put all the cars on the Lexington Terminal Railroad that you use in the average crop season, one behind the other. Now, let us take the road from Perry to Fort Valley. They handle during the six weeks of harvesting period of peaches something like five or six hundred or maybe a thousand cars. If the Congress of the United States should require that little road of that length, costing possibly $2,500 or $3,000, to equip itself with refrigerator cars costing $1,000 or $1,200 to build, you would effectually put that little road out of business. Now, let us go to a larger system. Nearly all of the peach business in my State, nearly all of the vegetable business in the State of Georgia, originates along the line of the Central Railroad and Banking Company—I think that is the road.

Mr. ADAMSON. I think the great majority of it does.

Mr. FELDER. Yes. The Central Railroad and Banking Company has, including its branches, something like fifteen hundred miles of road. The road ramifies all of south Georgia and a portion of eastern Alabama. Now, the statistics show that that road carried during the year of 1904 between 2,000 and 3,000 carloads of peaches to market; that those peaches were gathered and loaded and placed and hauled and sold within the period of six weeks; that it took to carry the peach crop alone—that does not include celery, cabbages, watermelons, and various other things produced and shipped—it took 4,000 cars, and 4,000 cars, costing $1,200 apiece, would be $4,800,000. The Central Railroad and Banking Company, as I am informed, is stocked and bonded for $15,000,000, and the people of my State and section complain that it is full of water; that is the usual complaint.

Whenever a case is tried before the Railroad Commission, and the railroad makes answer that that is its bonded debt, the people make replication that they ought not to have any such bonded indebtedness, that $15,000,000 is out of all proportion to the value of the road and its equipment. However that may be, I am not advised.

Now, then, this Congress proposes to add to that ten or fifteen million dollars in furnishing this special line of cars for carrying the crop of the State of Georgia, cars to the value of several million. When they are furnished, when this additional burden is placed upon the Central Railroad and Banking Company, you require them to add almost a third of the whole value of the road and equipment to carry the peach crop of the State of Georgia.

Mr. SHACKLEFORD. Why not get those cars by arrangement with other car lines that do not need them at that particular season of the year, and would need them at another season?

Mr. FELDER. I presume some such arrangement could be made, but if that arrangement was made they would have to pay rent for them.

Mr. SHACKLEFORD. Would that bring out in the Commission——

Mr. FELDER. We don't want it under the Commission.

Mr. SHACKLEFORD. Some do.

Mr. FELDER. Nobody in our country wants it under the Commission. I would like to ask what class wants it under the Commission.

Mr. SHACKLEFORD. The consumers do, I think.

Mr. FELDER. Mr. Ferguson stated before this committee that the producers of this country wanted it under the Commission, because the Armour people were engaged in buying and selling produce in competition with the farmers. No such thing has existed and could not exist for about two years——

Mr. ADAMSON. How is that shipment handled when it gets to its destination; do the brokers handle it?

Mr. FELDER. No, sir.

Mr. ADAMSON. As soon as your people have quit dealing in it?

Mr. FELDER. You take the California fruit, it is auctioned off in the market. You take the peaches——

Mr. ADAMSON. Who does that?

Mr. FELDER. They are sold before they are shipped, just like cotton, to factories and other things.

Mr. ADAMSON. Sold at auction before they are shipped?

Mr. FELDER. My information is that the California fruit is sold at auction when it reaches New York.

Mr. SHACKLEFORD. Sold like shipments of cattle or hogs.

Mr. ADAMSON. Do your people have anything to do with it?

Mr. FELDER. Not a thing on earth.

Mr. ADAMSON. Is there any other line that is now equipped with enough cars to handle the peach crop?

Mr. FELDER. No, sir; there never will be.

Mr. ADAMSON. Suppose you are not allowed to make exclusive contracts; do you not think others might grow?

Mr. FELDER. There are others. There are nearly five hundred private car lines doing business in the United States, and many other car lines are engaged in carrying peaches, fruits, and other things, just as we carry them. This talk about exclusive cars that you are in possession of is all rot. What are the facts about it? A railroad has not the equipment to carry this fruit, and they, in some cases, advertise for bids from the various car lines engaged in this business. If they do not, they go about and see every large shipper, and they will go out and find out upon what basis contracts will be made.

Mr. ADAMSON. I know how difficult all these matters are that you are talking about. There is one factor in this problem which nobody has mentioned in connection with your statement of these difficulties and expenses of transportation. I wish you would tell us something about the value of a carload of peaches that you would send to New York in good condition, if you can.

Mr. FELDER. The average value of peaches delivered in New York in prime condition is about $1,200 a car. The freight and icing is about $270, and there is no other expense connected with it. The Armour Car Line furnish men who go and properly strip and load the peaches in the cars. Then, if there is inspection, they send an inspector to New York who inspects the peaches when they arrive, with the result that the conditions that obtained prior to the so-called exclusive contracts that the Armour people have made and what obtains now were very much different. The fruit and vegetable producers of the country, the farmers, were at the mercy of every man who has come *up here on* this agitation, and he was at his mercy in this way——

Mr. ADAMSON. I know there used to be a great many shipments of peaches and watermelons by farmers who said that they had to make remittances——

Mr. FELDER. Precisely, and the reason for it is known of all men who have studied this question.

Mr. ADAMSON. In your statement of figures the entire expense of icing, preserving, and putting a carload of peaches in New York in good condition does not amount to 25 per cent of its value.

Mr. FELDER. Not at all, only the largest producer.

Mr. RICHARDSON. I am not a member of this committee, but I would like to ask a question.

Mr. SHACKLEFORD. You are at liberty, Mr. Richardson.

Mr. RICHARDSON. How long has it been since the Armour Company commenced the fruit business in the State of Georgia?

Mr. FELDER. Since 1898.

Mr. RICHARDSON. What were the shipments the first year that they did business?

Mr. FELDER. I have all that tabulated and I will put it in.

Mr. RICHARDSON. Well, about what was the shipment?

Mr. FELDER. Well, I would just as soon put it in now as later. I call the attention of the committee to the marvelous showing made——

Mr. RICHARDSON. That is what I want to know, and the growth and the increase of the business.

Mr. FELDER. I will take that up; it is not very voluminous. Take the State of Florida. Many years ago the State of Florida produced a large volume of vegetables which they sent by express to commission merchants, the farmer having no tab on it, and they would write back that the stuff had come in defective condition, not saleable or marketable, and to send money along to pay the freight——

Mr. RICHARDSON. Right there in connection with the initiative steps of developing the fruit trade in Georgia. Do you not lose money?

Mr. FELDER. Yes, sir; and last year was the first year, for a year or two, so I am informed, that they ever made a dollar in Georgia since 1898. They were petitioned to come to Florida with their crop. They had been doing business two or three years in Florida, developing the vegetable business, and restoring it to its pristine condition, the condition that obtained some years ago.

They have lost money every year. With the great development in the State of Florida for the past several years the very best we hoped to do, up to a couple of years ago, was to come out even. I was amazed myself at these figures. They are absolutely accurate, and I submit them. Now, in the State of Florida the growth of shipments of lettuce, celery, beans, peas, and cucumbers in the last six years from the Manitee River, the district where it is grown, Tampa, Sanford, Gainesville, that district is from 100 cars to 800 cars this season, shipped to the markets covering the East, West, and Middle West. This is the condition in the State of Florida as we found it. They were shipping less than a hundred cars when we took the contract in the State of Florida, and to-day we are shipping, this year, 800 cars, or an increase in the last three or four years of 700 cars.

I had the pleasure of meeting Captain Garner, who operates a lot of boat lines in the Manatee River section, and he and I discussed this matter with Captain Lamar, a member of this committee. He said that some years ago his boats got that business, but now he gets none

of it, yet that country has developed to such an extent, and there has been such an era of prosperity encouraged there by reason of the facilities furnished by the Armour car lines in the transportation of their products to market, that I am perfectly willing to lose the trade, Captain Lamar, myself, because I am a patriot, and I want to see these general prosperous conditions continue to exist. Take cantaloupes; in seven years, from nothing, in that climate and soil, which is particularly productive of that vegetable or fruit, the prospective shipments this year out of the State of Florida, in cantaloupes alone, will be 1,000 cars, and I am informed that they are worth from fourteen to sixteen hundred dollars a car.

Mr. ADAMSON. Does it cost any more to transport a carload of cantaloupes than peaches?

Mr. FELDER. As much.

Mr. ADAMSON. I did not mean the quantity, but the comparative expense.

Mr. FELDER. About the same.

Mr. ADAMSON. How is the freight; is it more for greater distances?

Mr. FELDER. Up to five years ago there was not a peach shipped out of the State of Florida, and not until within a comparatively short time—within the last ten years—were peaches considered adapted to that soil and climate. Now, four years ago there were no peaches shipped, and all the peaches were used in home consumption. During the last eight years there were 800 acres planted in the State of Florida, and about 150 cars will be this year shipped out in refrigerator cars. The acreage is being very largely increased every year because it is a profitable business.

Now I come to my own State. In reference to the statistics, I am sorry to say that we have been unable to get any reports whatever from the Agricultural Department—the National Agricultural Department—of this very large and growing industry in the South. These reports are taken from the various agricultural departments of the South.

Mr. ADAMSON. On your division of profits, you say it costs $270 a car from Georgia to New York, including the icing, storage, and freight?

Mr. FELDER. The whole charges.

Mr. ADAMSON. How much do you get and how much does the railroad get?

Mr. FELDER. I was coming to that later, but I will answer that question now, because it is vital in this hearing. There were half a dozen car lines competing for the business in Georgia, and there was the sharpest sort of competition. They had their agents there going everywhere soliciting business year after year, and they charged $100 a car for the icing. The first year after the Armour car lines made these exclusive contracts with the Central Railroad and Banking Company, the icing was reduced to $80 a car, and as the business developed they reduced it to $68.50 a car. There has been no complaint about the railroads, and they are perfectly satisfied with both of the services——

Mr. ADAMSON. Do you mean to say that the railroad gets $200 out of a car, and you only get $68.50?

Mr. FELDER. I think that the record will show—I have not prepared myself as thoroughly as the witnesses who testified. My recol-

lection is that the whole cost was $270 for a carload of peaches from the peach-growing country to New York. We get $68.50. Now, I submit, in that connection, that while on the face of the returns, so to speak, it would appear that the Armour Car Lines are making money—marbles and chalk out of this business—yet they are putting everything that they can rake and scrape into betterments and improvements, and they are declaring no dividends; and the chances are that they will not declare any for some years to come, for the reason that this scientific way of handling these products is in its infancy.

I submit that instead of this walking delagate, this man Ferguson, charging J. Ogden Armour with being an extorsionist, as he has charged here recently, he ought to say of him, and about him, and to him, that he is a patriot; that he is doing more to develop the South than any fifty men in it, and I will show you that he is. This refrigerator car proposition is in its infancy. About the time that we get one system of cars built, and the ice bunkers in as they should be, some inventive genius comes along and makes an improvement both upon the length of the car and the height of the car and its width, and the ice bunkers, and all that stuff is turned out, and some of the cars that are not adapted to the uses to which they were intended are converted into cheaper cars, cheaper carriers, to haul beer, or some other of the private-car products.

After the expenditure of some $15,000,000 in keeping these cars to do this precise business, he is confronted to-day with this serious proposition: He has got a magnificent line of cars, and the only perfected line in the world; some man has come to Washington and obtained a patent for a rarified air refrigerator car, and the general thought is that it is going to be successful. Of course, if it is successful Armour has got to buy it, and if he does buy it he has got to lose, I believe the testimony shows, the million dollars invested in ice plants and $14,000,000 in cars. Now, he has his investment of $14,000,000 that has been going into this enterprise year after year and it will be practically annihilated if he goes to this new system. That is a complete answer to this fol-de-rol about robbing the people and high prices and all that sort of thing.

Now I come back to the evolution of this industry under this horrible monopoly that you have been hearing about here; these exclusive contracts that have been exciting everybody in the country from the walking delegate to the occupant of The White House. Now, Georgia has been going along from year to year in a precarious way—has been growing peaches for fifteen or twenty years. On account of the fact that I am a widower I don't want to state my real age, but during my boyhood, which was a few years ago, the peaches that were grown in the State of Georgia that were not used by the servants and by the children and the family were all wasted. A little later on they were considered quite saleable, and it appeared that there was a profit in the production of peaches, so the result was that they got baskets and used to ship them out in baskets, and began to ship to longer distances each year, so that the industry was profitable. But it was not until 1898 that anything like a profitable peach crop was ever raised in the State of Georgia and put in the market.

In the year 1898 the high-water mark in the peach industry up to that time was reached, with every private car line with solicitors round through the country soliciting car loads of peaches, with their

cars iced, and all that sort of thing, and we find this condition: That year there were 1,800 carloads of peaches shipped. Mr. Hale, who is a millionaire, the largest peach grower in the world, from Fort Valley, Ga., stated to this committee a few days ago that the peach has got to be shipped the day it is gathered. One day he would have a surplus of cars, and the next day he would have his peaches gathered and could not get a car. One week they would have ice and the next week none, and therefore a large proportion of the peaches would rot in transit. They would load up one of those cars or two or a dozen and start them off full of ice, and before they got to the market the ice would evaporate and the peaches would be destroyed. He went on to explain how these private cars were run on side tracks right into where the trees were. The crates are put in by the Armour people, are nailed down, and run out on the side track and iced.

In order to handle this peach crop in Georgia and the vegetable crop in Florida and the crop in Alabama, they begin at intervals in the 900 to 1,000 miles from there to market and invest a million dollars in ice houses, in ice where these cars are sidetracked, and reiced from State to State from the initial point until the market is reached, with the result that there is no decay, and the peach arrives in a luscious condition, a state of complete preservation, and brings the very highest market price. Now, I say, before this exclusive contract was made, this grinding monopoly that is strangling this industry, and at a time when every car line in the country was competing for the business, the high-water mark was 1,800 carloads of peaches, as against 5,000 cars on the lines of road that I have mentioned; and as testified by Mr. Hale, when he was on the stand, 8,000 cars the present year.

This freeze has not killed the peaches, and with a propitious season from now on the additional acreage—this thing has grown by reason of this monopoly that you are seeking to strangle from 1,800 cars at $1,000 a car, which would be $1,800,000, up to 8,000 cars, the present year, or $9,700,000, one tenth of the value of the entire cotton crop of the State of Georgia. It is unnecessary for me to state to you, the members of this committee present, that if you get one crop in five it is more profitable than the cotton crop. Of course that fact is not understood by members of this committee who do not live in a cotton-producing country. But it is a fact universally known; it is known in my State and everywhere else where any account is taken of this industry, that every man engaged in it is either rich or growing so just as rapidly as it is possible to grow.

For the sake of getting it in the record, I want to take up—in passing I desire to say that does not include the vegetables of all kinds produced in that section and shipped. Now there is a district with Chattanooga as a center—of course it is very well known that north Georgia is a mountainous country and the climate and soil is, while also well adapted to peach growing, particularly adapted to other fruits and berries. Take Chattanooga as a center, within a radius of 40 or 50 miles in each direction; that is known as a berry country, and the development in berries, of the most luscious kind to be found in the world, within the last few years has been magical, and that industry has grown from a mere trifle to amazing and astounding proportions.

Mr. ADAMSON. What about pears? Is the pear crop big enough down there to give you any attention?

Mr. FELDER. It is beginning to be.

Mr. ADAMSON. Is it as difficult to ice and to save as peaches are?

Mr. FELDER. I understand not quite so much so.

Now the Armour car line started in the berry business about Chattanooga five years ago. They ran out a line for several years, and have figured their loss on the cost of cars and the cost of employees that they had, making no allowance whatever for changes in patents and changes of the kind that I have referred to, and last year from this neighborhood, from this district, they handled 500 carloads of berries. That comes along, as Judge Adamson knows—as you know, being from Alabama, Mr. Richardson—the northern tier of counties, where peaches do not flourish as they do in Georgia. These berries are berries that we handle in carload lots, and in this statement is not included the berries shipped by express and consumed in the home market. Those berries are shipped in carload lots and to a far-away market. I have not got the price of those berries; have not got it stated here. Take South Carolina peaches and canteloupes; the shipments have grown from nothing to about 600 cars per annum.

In North Carolina, which is a big berry producing country, and ranks in the production of berries just as Georgia does in peaches, stands No. 1 on the list. In twelve years, from nothing, to three thousand cars per annum. Now ten years ago Chadbourn, N. C., did not ship a carload, and to-day it is the largest berry-shipping point in the United States.

Mr. ADAMSON. I understand that there are two points connected with your car service that you claim justify any charge made either against you or the railroads; the first is that it is perishable fruit that has to go at first-class rates right through; and in the second place the fruit is not able to stand it, and they would lose more; and in the third place you have cars that you can transfer from one part of the country to the other and keep them busy all the time, and the railroad company owning them could not do that.

Mr. FELDER. That has been enlarged upon to such an extent that I have not discussed that matter. As I have stated, the peaches must be gathered and marketed—the whole crop—within six weeks. Last year, in gathering the crop during that time alone, in the State of Georgia, we used cars that were worth over $4,000,000; and besides that, no railroad could put that amount of money in rolling stock that would cost that much to be run for six weeks in the year. Now, in the testimony in the case, it is claimed that these cars can not be used for any other purpose. They occasionally might put some light boxes of dry goods in these cars, but if almost any other character of freight is transported in the cars the fruit and vegetables become tainted with the odor and the peaches will taste; and if the goods are shipped in white pine——

Mr. ADAMSON. All of that would be a lower classification of freight anyway.

Mr. FELDER. Precisely.

Mr. RICHARDSON. Now, as I understand it, you say that on a shipment of peaches from Georgia to New York the charges are about $270?

Mr. FELDER. That is as I recollect the testimony.

Mr. RICHARDSON. And the Armour charges amount to about $68.50?

Mr. FELDER. It has been reduced from $100 since we have had the so-called monopoly.

Mr. RICHARDSON. Is this under a specific contract that you make with the railroad?

Mr. FELDER. No, sir; we rent our cars to the railroad—yes, we make a contract with the railroads—but we have made no contracts with the railroad to reduce our refrigeration charges. You will understand, gentlemen, and I am a very strict believer in the fact, that these things regulate themselves.

It is a matter of universal information, and if you will take Poor's Manual of Railroads, you will find that wherever railroads consolidate they can render the service cheaper than before, and freight rates go down. Now, the Armour people have not gone into this business for their health. They realize that in order to get the best results from this business they must inaugurate it, foster it, and encourage it as they do. They find that they can handle this stuff for $68.50 a car, and they go to work and reduce it, since this monopoly, from $100 to that amount. It was worth $100 before.

Mr. RICHARDSON. You collect $270 and send to the railroads?

Mr. FELDER. It is all sent to the railroad; the entire sum is paid to the railroad and the railroad pays us our charge.

Now there are a whole lot of things that are natural monopolies. I have never been so impressed with the idea as I have been recently in my own State. We had a telephone company in the city of Atlanta that was rendering a perfectly satisfactory service, and charging us $66 a year for our telephones; and we thought that was excessive, and we went to work and got another telephone line built, and we are paying the same $66 for the old telephone and $30 now for the new one. I have them both on my desk in my office. Therefore I have reached a conclusion that this telephone monopoly is a natural monopoly, and this refrigerator car perhaps is a natural monopoly. I don't mean to say that it is a natural monopoly in the sense that they should not compete with railroads for the entire business of that railroad, but I say there is every reason why there should be exclusive contracts with a railroad, there is every reason why other lines should not be permitted to come in and compete for the business during the period of the exclusive contract.

The private-car lines, in order to render an efficient service to the producer, must not only furnish his private car, ice it when it leaves the initial point, after it is loaded, but he has got to build his ice houses along at frequent intervals to market, five hundred or a thousand miles. No, it is no use for me to argue that with 5,000 carloads of peaches, and 500 car lines to carry them, that they are all going to build ice houses along the lines of the railroads. Therefore the proper regulation, I think, comes with the competition for the business before the contract is entered into. Let us see how the monopoly works: When there were no exclusive contracts they charged $100 a car for an inferior service, and every man with a carload of peaches when the competition was full and free, paid $100 a car for the transpo tation of his products. To-day under this so-called exclusive contract service they pay $68.50 a car.

Mr. RICHARDSON. That is because they get all the trade.

Mr. FELDER. And another reason. Under the old system, as is shown by the testimony, when the ice factories in the South did not yield sufficient ice to stock the cars, they would frequently have to

send to the lakes, and pay three or four prices for ice to ice them with. With 300 to 500 separate car lines competing for the business, or even with 100 or even 10 competing for the business in Georgia, they could not figure with any degree of certainty at the beginning of the season whether they would be able to haul 50 cars or 5,500 cars. Therefore if they bought large quantities of ice and stored it and did not get the business, they would lose the ice and at the end of the season somebody would have to pay for it. The result was that the shipper did that. As it is now they have the inspectors, according to the testimony, and they are going about now watching the weather, and if the fruit is killed, they want to know whether it is all killed, or what per cent of it is killed; and Mr. Hale, in order to know all about the humidity of this spot and that spot, sends men crawling about with thermometers in the low places and in the high places to find out the effect of the cold upon the bud or bloom of the peach.

In other words, they have this thing reduced to a science. To-day they estimate that they will haul through Georgia 8,000 cars of peaches, and they estimate that 6,000 cars will go over the Central Railroad and Banking Company. What are the Armour people doing? They are making contracts with ice companies in every State in the South, and according to the testimony here the other day, wherever they find that they can not make a contract, they build ice houses. They could not do it if every man in the country should come in and share this business, because there is not enough business to justify it.

Now, there are other reasons why more than the usual freight should be charged. Now, at the outset I stated that while I appear for a number of very wealthy and influential peach growers, it is true I try the cases of these people, it is true I am attorney for these people in my country, and when the peach season opens, frequently there are claims made for a defective carload of peaches, they are half destroyed or all destroyed——

Mr. ADAMSON. Do you want to complete your hearing this afternoon?

Mr. FELDER. I think I will finish in twenty-five or thirty minutes to-morrow. I simply want to call the committee's attention to the legal questions involved.

Mr. STEVENS. That is what I wanted to hear—first, whether or not you make contracts now for interstate carriage, and, secondly, how far your refrigeration is that provided for in the original interstate act under the definition of instrumentalities, and if not, how far the operation of the bill, that is, the second section of it, would operate to cover you. I would like those points discussed.

Mr. FELDER. I want to make this statement before I suspend this afternoon—that upon the last paragraph of the bill, which provides that the service shall be rendered on the basis of 20 cents a day——

Mr. STEVENS. I think you have a misapprehension of the effect of that clause. The provision which I placed in the bill was that there should be no greater charge for this service—these cars—than is exacted by railroads from other railroads under similar conditions and circumstances.

Mr. FELDER. That is the 20 cents a day——

Mr. STEVENS. No, no, the railroads do not furnish that kind of equipment, so that there are no similar conditions and circumstances coming under the exchange agreement of 20 cents a day. All that

would have to be done would be that the railroads are required to pay what that service is reasonably worth, and that was three-fourths of a cent a mile and so much extra for refrigeration.

Mr. FELDER. I don't know why these men feel that way. I am not a business man myself, but whether the placing of their business under the supervision of bureaus and commissions is a benefit or a detriment to business men, I think it will be decided that business men do not want somebody else to handle their business if they can help it, especially when the men who handle their business, as a rule, would be wholly unfamiliar with it.

Mr. STEVENS. That is true as to the general proposition with respect to private business; but when it comes to the public carriage by which private individuals attempt a public service, then they must respond to the rules which are necessary to govern public service.

Mr. FELDER. I have been a legislator myself, not here, although I tried to come here at one time and did not succeed; but I want to make this suggestion to the gentlemen: I apprehend that no legislator will put himself to the trouble to secure the passage of a bill regulating any sort of an industry unless a rightful demand from somewhere exists for the enactment of that sort of a law.

Mr. STEVENS. I go even farther than that; I do not think that any law ought to be enacted unless there is a necessity for it.

Mr. FELDER. I lay this down as an indisputable proposition that there is no man in this country who ought to be interested in this matter more than the growers; they are not complaining; it is the commission men; but the producer, or the consumer, or the carrier, they do not make the slightest complaint about our business.

Mr. ADAMSON. Do we not get rid of a good many of those people?

Mr. FELDER. I am not referring to the merchants; the only complaint about this business comes from a lot of men who absolutely have no interest, direct or contingent, in the system.

Mr. STEVENS. I disagree to that. For example, Mr. Ferguson is a buyer of peaches; he buys fruits wherever he can find them and transports them to Duluth and other places and sells it.

Mr. FELDER. He buys and sells for a profit.

Mr. STEVENS. Certainly, you can not and ought not to eliminate these men; they perform a necessary and valuable function in society—they always have and always will. Somebody must do that work—take the products from the men who produce it to the men who consume it—and this class must be protected and encouraged rather than denounced and driven out of business.

Mr. ADAMSON. You all insist that you ought not to be made amenable to the commerce clause of the Constitution, although you do admit that the furnishing of railroad cars and the icing goes through the various States.

Mr. FELDER. Just as coal and wood are furnished all along the road as railroads need it.

Mr. ADAMSON. A man who agreed to furnish coal and wood in every State in the United States to railroads would be amenable to the Constitution.

Mr. FELDER. On the contrary, it has been held that he would not be by a distinguished justice of the Supreme Court—that he is no more engaged in interstate traffic than those who carry the baggage.

r. ADAMSON. You are correct in saying that he is not subject to t of Congress, but yet we may make an act of Congress putting hing under the commerce law that is business of an interstate acter.

r. FELDER. Of course that is a somewhat broader field than I ected to travel in.

r. ADAMSON. Here is what I meant to suggest to you. I understand that a great many railroads instead of buying rolling stock lease, d you make your position analagous to the position of those who se railroad stock?

Mr. FELDER. Absolutely.

Mr. STEVENS. Did you discuss how far you can compel railroads to erform the service you now perform, and in that way they may be ble to do business with you or with anybody else, and your service ould appear then to be under our supervision?

Mr. FELDER. I am sorry the chairman was not here when I discussed he impracticability of a requirement of that sort.

Mr. STEVENS. I am not speaking of the impracticability; I am speaking of the legal ability.

Mr. FELDER. Well, I do not believe—although it has been done.

Mr. STEVENS. I will read your remarks.

Mr. FELDER. I remarked that there were roads six miles long engaged in this business, and a couple of our cars would be worth more than the whole road. In other words, the Lexington Terminal Railroad, which carries watermelons, peaches, and so on, applied to Mr. Spencer, the president of the Southern Railroad, for an annual pass, and Mr. Spencer wrote him that he would rather buy his road than furnish him with an annual pass over the Southern Railway. I wish to discuss the legal questions involved, and with your permission I will do so to-morrow morning.

Thereupon at 3.10 o'clock p. m. the subcommittee adjourned.

WASHINGTON, D. C., *February 17, 1905.*

The committee met at 10.30 o'clock a. m., Hon. Fred. C. Stevens in the chair.

STATEMENT OF MR. THOMAS B. FELDER, JR.—Continued.

At the hour of adjournment on yesterday, Mr. Chairman and gen tlemen of the committee, we were discussing the question of the refri eration of the private cars. We will take Georgia as an illustratio as I represent more particularly the people of that State at this hea ing. It seems to me that the business is transacted in about this wa That the private car line leases or hires to the railroad its cars a certain stipulated price, to be used in carrying the products of t farmers—that is, peaches and vegetables. Then a separate contrac made with the peach growers or producers for refrigerating or ic the cars.

Mr. STEVENS. Is that at the beginning of the season or durin continuance?

Mr. FELDER. As I understand it, the contract is made for a certain period with the railroad. I see some of the representatives of the car lines here. I would like to know when that contract is made. I know that it is made.

Mr. ROBBINS. It is generally made even before this time in the year, for the coming summer, so that the necessary ice can be provided and stored.

Mr. FELDER. Now, the particular method pursued is this: After the contract is made for icing the cars, which is a separate contract from the contract with the carriers for the hire or leasing of the cars, the peaches are loaded into the cars. They are locally refrigerated, and the car starts on its trip to its destination, and there are ice plants erected along the line of travel of the car, and the particular car loaded with the fruit is taken out about every 90 miles, or whenever it is necessary, at the local plants, and the ice supply is replenished, and that is done from time to time until the car reaches its destination.

Mr. STEVENS. Now, what I want, Mr. Felder, is a detailed statement of about how much ice you use at the initial point, how much at different points, say Atlanta or Charlotte, or Danville, Alexandria, or wherever it is iced, and at Jersey City.

Mr. FELDER. I am not in a position to furnish that information. I have no doubt that the car lines or the peach growers will furnish that information to you.

Mr. STEVENS. Will you have it furnished and made a part of your statement?

Mr. FELDER. I will undertake to do it. None of my clients are in the city now. I will communicate with them and get that information and incorporate it in my remarks. I might add, Mr. Chairman, if the view I take is the correct view, and I believe that we can demonstrate it when an opportunity is afforded, that according to numerous decisions of our Supreme Court that is a matter with which this committee can have no concern.

The CHAIRMAN. We can get at it, I think, in some way.

Mr. FELDER. Yes, sir; the service in icing these cars is purely a local service, and the Supreme Court has held it to be so in some 15 or 20 adjudications. In other words, they have held that in furnishing coal to a railroad train, which is engaged in interstate commerce, it is a local service. Of course, a railroad car running between the States is not interstate commerce; that is simply the agent of interstate commerce, and they may have running along the line between two States any number of coaling stations, and they may coal an engine across the Union, and the man who furnished the supply could not be considered as being engaged in interstate commerce, because he is not a transporter, and is not engaged in transportation, and he does none of the things that are considered interstate commerce.

Mr. STEVENS. We consider it an entirely different proposition. This is an instrumentality which contributes to commerce.

Mr. FELDER. Bnt it seems to me that the case I cited is analogous to the case at bar. We do the identical thing that is done by the coal dealer who has his coal stations erected from one State to another along the entire line of a railroad system. What do we do? We simply enter into a contract with the fruit, berry, and vegetable growers to erect icing plants, commencing in the State of Georgia and located about 90 to 100 miles along the line of the route. We transport nothing *and have no* contract for transporting anything.

Mr. STEVENS. Can we not compel the railroads to do that, as an instrumentality of commerce, the same as they furnish coal and charge it in the same way as a part of their freightage?

Mr. FELDER. Yes; but that can be met by saying that wherever you would compel a railroad to do that thing you would bankrupt that railroad. Bankruptcy is inevitable, because there is no system in this country that can furnish the private cars that are demanded in modern commerce to carry the various things that can be transported properly in no other way.

Mr. SHACKLEFORD. Mr. Chairman, while you are on that topic, at the request of some of my constituents, I wrote to the attorney-general of my State for a recapitulation of some of the testimony that had been taken in my State concerning the private car lines, and I have that here, and I would like to file his letter to me and the excerpts from the testimony in that case as a part of the hearings on these private car lines.

Mr. STEVENS. Very well; it will be made a part of the record.

Mr. FELDER. I would like to be heard further, Mr. Chairman, when it is possible.

Mr. STEVENS. We will try to hear you.

(Thereupon the committee adjourned.)

WASHINGTON, D. C., *February 18, 1905.*

The subcommittee met at 2 o'clock p. m., Hon. Fred. C. Stevens in the chair.

STATEMENT OF MR. A. R. URION.

Mr. Chairman and gentlemen of the committee, before proceeding with my remarks I should like to answer a question which was propounded to Mr. Felder yesterday, as to whether or not the railroad could be compelled to furnish the refrigeration as a part of the facility of transportation. I can best answer that by quoting the language of Mr. Justice Brewer, in the Knight case, 192 U. S., page 21, where, speaking of the cab service which was in question, he says:

> It is the character of the service, not the character of the carrier, that determines whether it is interstate commerce or not.

Of course if refrigeration is not interstate commerce, then Congress has no power to regulate it. There is a long line of authorities, beginning with Osborne *v.* Florida, 164 U. S., 650; U. S. *v.* Knight, 156 U. S., 1, 10, and 16; Nathan *v.* Louisiana, 8th How., 73; U. S. *v.* Boyer, 85 3d Rep., 425, which say:

> It is self-evident that, however broad and unlimited the language of a statute may be, it must be construed so as to apply only to the matters and transactions within the domain of the lawmaking power, i. e., an act of Congress concerning commerce can be extended only to that which is strictly interstate commerce in a legal sense.

Furthermore, I quote from Mr. Justice Peckham in the case of Hopkins *v.* U. S., 171 U. S., 578—and I will not read all of that now, because it becomes more pertinent later on—on this particular point:

> They are agreements which in their effect operate in furtherance and in aid of commerce by providing for it facilities, conveniences, privileges, or services, but which do not relate directly to charges for its transportation, nor to any other form of interstate commerce.

Now, if refrigeration, as I said before, is not in itself interstate commerce, but is a local service or facility, then Congress can not regulate it.

Mr. STEVENS. Is it not more than that? Was not the testimony to the effect that you made a contract at the beginning of the season, about this time, for the following season's service? You iced the car at the initial point in Georgia, you iced it at Atlanta, and at Charlotte, N. C., and at some point in Virginia—Danville or Alexandria—and then in Jersey City. Now, you loaded the car and performed all all of that service in those various States as one entire contract concerning an article of commerce. Does not that constitute interstate commerce?

Mr. URION. No, sir. I will go into the Hopkins case a little further in answer to that question, quoting further from Mr. Justice Peckham; and he answers all those questions practically. This refrigeration service is something that is performed right along the line of the road. He says:

> Would an agreement among the landowners along the line not to lease their lands for less than a certain sum be a contract within the statute as being in restraint of interstate trade or commerce? Would it be such a contract, even if the lands or some of them were necessary for use in furnishing the cattle with suitable accommodations? Would an agreement between the dealers in corn at some station along the line of the road not to sell it below a certain price be covered by the act because the cattle must have corn for food?

So as to the fruit. The testimony is that all fruits must be refrigerated. Fruits must receive refrigeration for their care and preservation.

Mr. Justice Peckham says further:

> Or, would an agreement among the men not to perform the service of watering the cattle for less than a certain sum come within the restriction of the statute? Suppose the railroad company which transports the cattle itself furnishes the facility, an that its charges for transportation are enhanced because of an agreement along the line not to lease their lands to the company for such purposes for less than a named sum; could it be successfully contended that the agreement of the landowners among themselves would be in violation of the act as being in restraint of interstate trade or commerce? Would an agreement between builders of cattle cars not to build them under a certain price be void because the effect might be to increase the price of transportation of cattle between States? Would an agreement between dealers in horse blankets to sell them for not less than a certain price be open to the charge of a violation of the act, because horse blankets are necessary to put on horses to be sent long journeys by rail, and by reason of the agreement the expense of sending the horses from one State to another for a market might be thereby enhanced?

Mr. STEVENS. Is there not a great difference between a negative proposition like that and the affirmative act which you contract to do, which is an instrumentality of commerce and must be done in furtherance of commerce between the several States?

Mr. URION. No, sir; my contention is that it is not an instrumentality of commerce; it is an aid.

Mr. STEVENS. Is it not more than an aid?

Mr. URION. We are getting pretty deep into a question which I have arranged to touch upon later.

Mr. STEVENS. You had better proceed, then, in your own line.

Mr. URION. I will reach that presently. To proceed in regular order now, I want to say that I shall not indulge in theories or possibilities, but as far as I am able I will in a plain manner deal with facts and realities.

The measures before Congress to regulate or abolish private cars, which this committee is called upon to deal with, are largely due to public demand that a remedy be provided, if one does not already exist, to correct and remove alleged wrongs and abuses.

The first and principal wrong and abuse complained of, if I understand the public sentiment, is that private cars are in some manner made the medium through which the owners receive rebates from railroads.

Mr. STEVENS. The owners, or somebody else.

Mr. URION. Well, I will reach that in the answer. The second wrong alleged is exclusive contracts with railroads for the rental and use of the cars—called by the more radical element secret contracts. The third alleged wrong is exorbitant charges by the private-car companies for the special service of refrigeration rendered shippers.

It is right that some measure should be provided if the wrongs complained of actually exist; and, if the laws now on the statute books provide no remedy, I shall not be heard to raise my voice in protest. In answer, now, to the first charge, that the Armour car lines are being used in some manner, directly or indirectly, as a means or medium for the owners or others to receive rebates from the railroads, I desire to say, and I want to say to this committee, and through the committee to the public, with the same emphasis and force that I would use if I were making the declaration under the solemnity of a judicial oath, that the charge is not true.

If the representatives of the element, so conspicuous in public, who are sowing socialistic seed that may bring about great peril to our nation—that element which has not invested a penny in the upbuilding of the great industries of this country, which attacks property rights, and seeks the enactment of laws to imperil the investment of capital—which element is so violently assailing the private-car interests, believe the contrary of the statement that I am about to make—and I make this with knowledge whereof I speak—that the Armour car lines do not directly or indirectly receive from railroads, either for themselves or other persons, any rebates whatever—I repeat that the people who believe the contrary and are looking for a remedy, and asking Congress to provide one, need only go to the judicial branch of the Government in the enforcement of the remedy which Congress has already provided. I refer to the Elkins amendment to the interstate commerce act, which, in plain terms, if I can read the English language correctly, furnishes the remedy and the punishment. Permit me, therefore, to quote therefrom:

> And it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto, whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give, or solicit, accept, or receive any such rebates, concessions, or discriminations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars.

It seems to me plain that private-car companies need not be legislated into the realm of common carriers in order to bring them within

the purview of this law. The merchant, the manufacturer, the individual who receives rebates from the railroads can be reached and punished under that act.

And why does not the element which is spreading these charges, which is inflaming the public mind, and which is working irreparable injury not only to the industries attacked but to all industries which are dependent upon the investment of capital, either by a few individuals or by the public, file its charges with the proper branch of the Government, and put into action the machinery which Congress has already provided? This query has no doubt already presented itself to your minds, and I venture this answer: Because its allegations and charges would have to be made under a sacred judicial oath, and it could not indulge in the extravagant misstatements which have been voiced here. The law punishes for perjury.

Passing now to the second alleged wrong, of exclusive contracts with railroads for rental and use of the cars, the so-called secret contracts——

Mr. STEVENS. One moment. On the first wrong, I want to ask you whether or not the Armour car line is not the medium for the payment of rebates for the purpose of influencing transportation?

Mr. URION. Absolutely not.

Mr. STEVENS. Is there not a method, and has it not been used? You charge excessive prices for refrigeration——

Mr. URION. That is the allegation.

Mr. STEVENS. That is the allegation, yes. You get excessive mileage by running fast——

Mr. URION. That is the allegation.

Mr. STEVENS. That is the allegation. And in order to get business you pay or offer some advantages to shippers to use your cars, and compel them to use your cars when they otherwise would not?

Mr. URION. No, sir——

Mr. STEVENS. That gives that shipper a practical rebate.

Mr. URION. No, sir; and if my answer was not broad enough to cover that, I want now to make it broad enough to cover it.

Mr. STEVENS. Has that not been done?

Mr. URION. No sir. In times past it was done, but the time for taking and giving rebates has long since passed for the car lines.

Mr. STEVENS. What do you mean by "long since?"

Mr. URION. I mean since it was made unlawful.

Mr. STEVENS. There has been nothing of that kind since the Elkins Act?

Mr. URION. No sir. And I repeat, if that element which is so rampant in stirring up that matter believe that it is, all they have to do is to go before the judicial branch of the Government and put the remedy that has already been provided into effect.

Passing now to the second alleged wrong, that of exclusive contracts with the railroads for the rental or use of cars—the so-called secret contract—I deny that there are secret contracts; and in support of my denial I refer you to the case of Consolidated Forwarding Company *v.* The Southern Pacific Company, in U. S. C. C. Rep., in which the Armour car lines, or the Armour Company, as it was at that time, intervened. That was a case in California that was tried in January, 1899, six years ago. At that time the exclusive contract with the Southern Pacific Railroad was brought forward, presented to and filed

with the Commission. That contract has never been regarded as secret by anyone who had interests in it, nor by the public in California. As an evidence of that, the Chamber of Commerce of Sacramento, in 1903, in commenting upon the contract with the Southern Pacific Railroad, said——

Mr. STEVENS. Is that the case that you showed me the other day?

Mr. URION. Yes, the Consolidated case, in 1899; six years ago.

Mr. STEVENS. Yes, I read that.

Mr. URION. The report of the Sacramento Chamber of Commerce said:

The division of the fruit-shipping business among these five companies did not justify any one of them in erecting the extensive plants and putting into operation such a complete system for the refrigeration and care of green deciduous fruit while in transit as is necessary and as is now in operation throughout the United States. Such conditions prevailed until 1900, when a contract was entered into between the Southern Pacific Company and the Armour Car Line Company.

I might say that this contract of 1900 was a renewal of the one previously in force, to which I referred as coming out in 1899.

(Reading):

Such conditions prevailed until 1900, when a contract was entered into between the Southern Pacific Company and the Armour Car Line Company, giving the car line the exclusive privilege of operating in California, in return for which the car line obligated itself, at all times, to provide sufficient number of refrigerator and ventilator cars to all shippers on equal terms. The rate was reduced by the Armour Car Line from $175 to $100 from Sacramento to New York on 26,000 pounds, and the rates to other places proportionately decreased.

I state it as a fact within my own knowledge that five years ago in North Carolina such exclusive contracts existed, and they were not secret. As an illustration I will say that in December, 1899, after experimenting for a few years with competing car lines, the growers in the fruit and berry districts in that State went to the then traffic manager, now vice-president of the Atlantic Coast Line, and demanded that the company which should undertake to furnish the cars for the next season should deposit $10,000 in cash to protect the growers and shippers against the losses they had theretofore and in previous years sustained by reason of the inadequate supply of cars and the losses resulting from improper icing and refrigeration. The railroad company demanded and received that deposit from one of the car companies—not Armour—and that company undertook the business for that year. It proved to be a disastrous one for the growers and shippers because of the failure of that company to provide at the proper time, when needed, sufficient number of the special cars, and because of the lack of facilities to properly ice and care for the contents of the cars.

The claims for losses by the growers and shippers that year ran far beyond the $10,000 cash deposited by that company, and so dissatisfied were the growers and shippers on the line of that road in North Carolina that they again went to the railroad and demanded that an rrangement be made with some one responsible car company for quipment and the required icing facilities to cover the next year. At hat time there were three competing car companies, and the railroad tated to the growers that they should investigate for themselves and decide which of the companies they wanted, and when they had selected one, that it, the railroad, would, if the growers and shippers desired, enter into an exclusive contract for a term of years. After a com-

petitive test and submission of rates by the several car companies the Armour car line was selected by the growers and shippers, notwithstanding their rate for refrigeration was somewhat higher than that of the other competing companies; whereupon the railroad was requested by the growers and shippers to enter into an exclusive contract with the Armour car line, which the railroad did, for a term of three years. When that term expired, the railroad again, at the request of the growers and shippers, because of the satisfactory service, renewed the contract for five years, and that contract is now in force.

Mr. STEVENS. Now, just tell us what territory that covers.

Mr. URION. That covers the berry district of North Carolina, all of the shipping district of North Carolina. Two roads operate there, the Atlantic Coast Line and the Seaboard Air Line.

Mr. STEVENS. About how many counties does that district cover, and how many cars would be required there?

Mr. URION. About 2,000 cars come out of there now, if I understand it.

Mr. ROBBINS. There were about 2,200 cars on the Atlantic Coast Line alone last year.

Mr. STEVENS. Could you give us the names of some of those growers?

Mr. URION. I am not able to do that.

Mr. STEVENS. Could you, Mr. Robbins?

Mr. ROBBINS. The Atlantic Coast Line did most of that business there, over a territory of about 150 miles.

Mr. STEVENS. We would like to have the names of some of the growers there.

Mr. ROBBINS. Oh, the names of growers?

Mr. STEVENS. Yes, the names of growers.

Mr. URION. We can give that to you, I am sure. I will ask that that memorandum be made for you.

Now, here are three instances meeting the charge that has been spread all over the country about these secret contracts. But that is not all. I know of my own knowledge, and it was stated to this committee by Judge Gober and Mr. Hale a few days ago, that not only was the Georgia exclusive contract entered into with the knowledge of the growers and shippers affected, but it was entered into at their request and on their solicitation. Still further, I wish to call the attention of the committee to the fact that there was absolutely no secrecy about these exclusive contracts, and there never has been.

Mr. ADAMSON. Will you please answer me this legal question?

Mr. URION. I will endeavor to.

Mr. ADAMSON. If there are four or five car companies, all of them irreproachable as contractors, and the railroad, whether at the solicitation of the fruit growers or not, trades with the one that makes the most earnest efforts and gives the best guarantees, is that discrimination?

Mr. URION. No, sir; and it is entirely lawful. I want to get through with the part of this concerning the secret feature of it, and then I will take up the exclusive feature, which immediately follows it. I wish to read you from the sworn testimony of Mr. Patriarch, general traffic manager of the Pere Marquette, concerning the exclusive contract with that road, which has been so particularly referred to before

the committee here. This testimony was produced before the Interstate Commerce Commission at the hearing in Chicago last May:

Mr. DECKER. Now, Mr. Patriarch, your company, after the cancellation of the arrangement in 1902, at the end of the shipping season, made a new arrangement and entered into a definite contract for a term of years with the Armour car line in December, 1902. Is this correct?

Mr. PATRIARCH. Yes, sir.

Mr. DECKER. Have you a copy of that contract with you?

Mr. PATRIARCH. I think that contract is filed with the Interstate Commerce Commission.

Commissioner PROUTY. I think that contract is in the record, Mr. Decker.

Mr. DECKER. I was going to ask Mr. McPherson.

Now, Mr. McPherson was the counsel of the Pere Marquette Railroad.

Mr. McPherson, did you send to the Commission a copy of the contract of 1902?

Mr. MCPHERSON. Yes, sir.

Now, I have given you instances of these contracts, including those in California, North Carolina, Georgia, and Michigan, showing that there was no secrecy. The only secrecy was that they were not proclaimed from the house tops or nailed to the court-house door.

Mr. STEVENS. Why was that contract sent to the Interstate Commerce Commission?

Mr. URION. I do not know. There was no reason why it should be filed with the Interstate Commerce Commission any more than a contract between a merchant and the owner of a building.

Mr. ADAMSON. Which contract is that?

Mr. URION. The Pere Marquette contract.

Mr. STEVENS. Was there any competition in obtaining the contract with the Pere Marquette Railroad?

Mr. URION. That I can not tell you. Mr. Robbins can answer tha better than I can.

Mr. ROBBINS. There was; yes, sir.

Mr. STEVENS. How many other lines competed, do you know?

Mr. ROBBINS. I do not know that I can answer that; but I might explain in that connection that the practice had been for the Pere Marquette road to furnish a few cars themselves, and for them to go to all the railroad connections for such cars as they could get from them, and to get some cars from the private car lines if they could. In other words, they got cars in any and every way they could; and by leaving it open in that way they found that they could not get enough. Everybody's business was nobody's business, and the result was that the shippers were unable to get equipment.

Mr. URION (resuming). I ask the committee what can be more clearly shown than that the alleged secret feature of the exclusive contracts with railroads exists only in the minds of certain people who choose, from some ulterior purpose, to so consider.

It seems to me unnecessary to say anything further on the so-called secret feature, and I shall therefore pass to a consideration of the exclusive feature. Admittedly we make exclusive contracts with railroads wherever possible. It is lawful for us and it is lawful for the railroads to do so, and I cite as my authority the Supreme Court of the United States in the Pullman Car and the so-called Express Company cases, reported in 117 U. S., beginning on page 1. I will not read them here, but they held, flat-footed, that the railroads had the right to make

exclusive contracts for one company to the exclusion of all others—with the Pullman Car Company for the accommodation of passengers, and the Express Company for the carriage of merchandise and commodities.

Admitting then, as must be done, that exclusive contracts are lawful, I shall attempt to show you, and firmly believe will be able to convince you, that exclusive contracts are necessary in order that growers and shippers may obtain the service necessary to make their business successful and profitable. In order to meet the necessities which exist to refrigerate contents of the cars when demanded by shippers, the car company must maintain, at many hundred places in the different States, icing stations or ice houses, where the ice either from natural lakes or from artificial ice factories is stored. At each place a corps of men are employed, machinery for transferring the ice from the ice houses into the bunkers of the cars is maintained, and in addition thereto it owns and operates in different States artificial ice factories, and in other States natural lakes from which ice is cut, all of which is used at the many local points for the refrigeration of the contents of the cars when the same is so requested by the shipper.

The business is one of great hazard. Ice must be stored at the different localities where fruits and berries are raised and in the different States between that section and the principal markets of the country, long in advance of the maturity of the crop, and in sufficient quantity to anticipate the requirements of the shippers. At the present time the ice houses in Georgia are being filled, in anticipation of the next peach crop, which does not mature until August.

Mr. ADAMSON. I noticed this morning that the Columbus papers say that every bud in the State is killed.

Mr. URION. Very well; then we have accumulated several thousand tons of ice down there which must go to waste, as it did in 1899, I believe, as has been testified here. Contracts have been entered into with ice factories in that State for many thousand tons of ice, which is now being manufactured and stored, and so at different points in different States from that section to the principal markets. There may not be a car of peaches moved from Georgia next season. Who can foretell whether or not there will be a crop? The same condition exists in every fruit and berry section of the country. If the ice is not used; if the labor—and it is skilled labor to a large extent—kept upon the pay roll the year around, is not required, the car companies suffer great loss. As an incident of the great risk and the large expenditures required, I am free to cite a contract that has recently been entered into with the so-called Senator Clark's railroad, running from Salt Lake City to southern California, a part of it traversing the great desert of Death Valley. I believe it is called the Salt Lake City and San Pedro road. It is not known what the future fruit prospect on the line of that road is, but believing in the future development of the country along the line of that road, the Armour car line have contracted to furnish the special fruit and berry cars that may be needed during the period of several years, and in order to furnish to the shipper of fruits and berries, if he shall so require at any time during that period, the ice for refrigerating the contents of the cars, the car line company has been required to erect, and is now erecting, on the edge of the desert, an artificial ice factory, at an estimated cost

f $75,000. I mention this to show the risks of the undertaking and he enormous outlay of money required.

The contracts between the railroads and car companies bind the car ompany to perform the service of refrigeration for the shipper if he shall equire it, being held responsible to the shipper in such case for failure; nd, as another element of risk in connection with the business, I may ay in passing that large sums of money are paid annually to shippers y way of legitimate claims for failure or neglect on the part of mployees at local points to properly ice or refrigerate the contents f cars. Neglect will and does frequently happen; and then there are ircumstances which are beyond our control, as was the case in Idaho, here the ice houses burned down, which was referred to in Mr. Rob-ins's testimony.

Mr. ADAMSON. There is no such uncertainty about the peach crop ut in Michigan, is there, where the springs are later, as there is in eorgia?

Mr. URION. It varies. The trouble out there, Mr. Adamson, is that hey do not handle their trees as they are handled in California or as hey are handled in Georgia, and very often the trees in the Michigan listrict overbear; they bear so large a crop one year that the next ear's crop may be very light.

Mr. STEVENS. And they have diseases?

Mr. URION. Yes, sir; diseases get among them.

Mr. ADAMSON. I referred more particularly to the uncertainty on ccount of cold weather.

Mr. URION. I think the lake protects them more fully from frost.

Mr. ADAMSON. They never lose a crop from frost in California?

Mr. URION. Why, yes; I believe it was in 1899 that we had that ig frost in California while this Consolidated case was on trial before he Interstate Commerce Commission in Los Angeles. Am I not cor-ect about that, Mr. Robbins?

Mr. ROBBINS. Yes, sir.

Mr. URION. Where some 20,000 cars were expected to be hauled ut of there that year, it was reduced to nearly three-quarters.

Mr. STEVENS. Reduced nearly three-quarters?

Mr. URION. Yes, sir. And Mr. Robbins has gone into greater detail n giving you other reasons than I have attempted. The report of the hamber of commerce of Sacramento, which I read you some time go, and the statement of each one of the growers and the shippers of eorgia who appeared before you, the statement which I have made o you concerning the North Carolina growers and shippers, and the worn testimony of the growers and shippers from Michigan pre-ented at the Interstate Commerce Commission hearing in Chicago ast May, and which I shall read to you presently, all bear testimony o the fact that such exclusive contracts are necessary in order that he growers and shippers may be best served; and they bear further estimony to the fact that where several different private car com-anies are in competition and their equipment is used in one district, he growers and shippers are not served in a manner to protect their est interests, and that where there have been several companies there as either an insufficient number of cars at the time when they were ost needed or that they were insufficiently iced.

No one company assumed the responsibility, and, indeed, no one ompany could do so, for the reason that it was impossible to know

how many cars of their line would be used, or how much ice would be required from any one company to take care of the fruit that might be shipped in their cars, and the result was that chaos reigned, and the growers and shippers suffered great loss. That is the testimony from every district where there have been competing private car companies. You are familiar with the statements of the gentlemen from Georgia, and with the statement of Mr. Robbins, and with my statement concerning North Carolina, and with what the Sacramento Chamber of Commerce has said on this point, but I beg to read to you an extract from the testimony taken in the Michigan case in Chicago last May before the Interstate Commerce Commission on this point. All this testimony was under oath before the Interstate Commerce Commission.

Mr. ADAMSON. Why have none of the peach growers of Michigan taken the trouble to come here and testify that they are being outraged?

Mr. URION. I want to say in answer to that that in all of the complaints that have been made against the Armour Car Line—and they seem to be the target at which everybody shoots—not a single grower or shipper has been heard to complain. I do not mean by that that there are not some dissatisfied and disgruntled shippers, because it is impossible to satisfy everybody; and I have no doubt that there are shippers who have grievances; but I do not believe that any of them can state honestly, without prejudice, that their financial condition has not been bettered, as a whole, by the installation of the Armour Car Line on the railroads of their district, and by the service that went with it.

Mr. STEVENS. Of course, they admit that. What they say is that it would be better for the railroads to perform the service themselves.

Mr. URION. I expect to show the committee presently, when I reach that feature of it, that the railroads can not be required under the Constitution to perform that act, unless it is an act of interstate commerce, and I expect to go further and show you that the service is a local one, and not one performed as a part of interstate-commerce transportation.

I want to say, gentlemen, that in every district where we have been assailed, where the attack has been public, and we have had a chance to defend ourselves, the most prominent growers and shippers have voluntarily come forward, as they did before this committee, to testify to the good of the service.

Thereupon, at 2.45 p. m., the subcommittee adjourned until Monday, February 20, 1905, at 2 o'clock p. m.

WASHINGTON, D. C., *February 21, 1905.*

The committee met at 2 o'clock p. m., Hon. James R. Mann (acting chairman) in the chair.

ARGUMENT OF MR. A. R. URION—Continued.

Mr. URION. Mr. Chairman and gentlemen of the committee, leading to the discussion of the main question before the committee, I stated on Saturday there were three things that seemed most to concern the

public respecting private cars. One was that they were believed in some manner to be used as a means for paying rebates received from the railroads, paid to the owners of car lines and others. That I discussed and made a positive denial of any such thing.

The second point was that of the exclusive contract with the railroads for the private cars, called by some "secret contracts." I took up that feature and discussed it, showing absolutely that the secret feature never existed; that as far back as 1898 an exclusive contract was in force in California, and that was followed down to five years ago in North Carolina, when the growers and shippers joined in a petition for an exclusive contract; then into Georgia, where the same thing was done, and into Michigan itself, which has been talked about so much. So that so far as the secret feature of the contract is concerned, I think that was pretty thoroughly exploded.

As to the exclusive feature of the contract, I admitted that the car lines made exclusive contracts with the railroads wherever it was possible to do so. I said that those contracts were lawful, and in support of my statement I cited the Supreme Court of the United States in the Express case and the Pullman car cases, to the effect that they were necessary to the best service of the shippers and growers. I started in and quoted the testimony which you have listened to from growers and shippers from West Virginia and Georgia, from statements that were made respecting North Carolina and California, and I had just started in, at the time of the adjournment, to read the sworn testimony of certain growers and shippers from Michigan who were heard before the Interstate Commerce Commission at the hearing last June, in Chicago. With your permission I will proceed from that point, taking up first the testimony of Mr. Patriarche, who is the general manager of the Pere Marquette Railroad in Michigan.

Mr. PATRIARCHE. What was the difficulty in handling fruit prior to the contract with the Armour car lines?

Mr. PATRIARCHE. It was the lack of refrigerator cars.

Mr. MCPHERSON. * * * Is it true that the Pere Marquette receives any rebate, or in any way has returned to it the amount of mileage it pays on the car?

Mr. PATRIARCHE. No, sir.

* * * * * * *

Mr. MCPHERSON. Is it practicable for the company, with certainty, to furnish as good service by any other means with which you are acquainted as it furnishes under the present Armour car-line contract?

Mr. PATRIARCHE. It would be impossible to do so.

Mr. MCPHERSON. Why so?

Mr. PATRIARCHE. Because the refrigerator cars, as to numbers and the ability to obtain them, are very limited. We have tried in years prior to this contract to obtain all the refrigerator cars we wanted in order to take care of the fruit crop of the territory that we have to take care of, and we found great difficulty in getting refrigerators, and there are a great many conditions connected with the operation of these miscellaneous refrigerators that make it almost impossible to handle the fruit business properly.

Mr. TOWNSEND. Is Mr. Patriarche the assistant counsel for the Pere Marquette?

Mr. URION. No, sir; Mr. McPherson is the assistant counsel. Mr. Patriarche is the general manager.

(Reading:)

One of the disabilities is this, that a miscellaneous refrigerator has got to go to a certain territory and has to go back to the road we received it from. Very often these cars are loaded with fruit that is not billed. There is no destination at the time they are loaded, but it is effected a few hours afterwards, and very often a car

would be loaded to go east, and when the seller receives his instructions that car is to go west. We are up against that feature in regard to miscellaneous refrigerators, and in the use of the Armour car we have a car that will go to any place in the United States without regard to route.

Mr. McPHERSON. Mr. Patriarche, were you prompted in making the contract with the Armour Car Line by any other purpose than to secure a good service for the fruit shippers?

Mr. PATRIARCHE. Yes, sir; that is the only motive.

Mr. McPHERSON. No other motive?

Mr. PATRIARCHE. No other motive.

Mr. McPHERSON. Have you been able under that contract to give a better service than you were ever able to give before?

Mr. PATRIARCHE. We think we have ever since we have had the use of those cars.

Commissioner PROUTY. Did you make an effort, Mr. Patriarche, to trade with any other car line before you closed with the Armour Company?

Mr. PATRIARCHE. We have with a great many. We have been offered 100; we have been offered 200; we have been offered 50 refrigerator cars by different companies, but here is a traffic that has to be moved in four or five weeks that involves two or three thousand cars.

Commissioner PROUTY. Is there any other car company that could supply your wants except the Armour Company?

Mr. PATRIARCHE. I do not know of one in the United States.

* * * * * * *

Commissioner PROUTY. How many refrigerator cars would it require to handle the traffic on your line; how many cars must you own to handle the traffic on your road?

Mr. PATRIARCHE. I would say, Mr. Commissioner, to handle the peach traffic alone during the months of August and September, we would need 2,500 to 3,000 cars.

Mr. ESCH. My impression was that Mr. Ferguson testified that the Pere Marquette used about 1,800 or 1,900 cars.

Mr. URION. There were over 3,000 cars used during the peach season of 1903 for the moving of that crop.

Commissioner PROUTY. Suppose the Pere Marquette road furnished its due proportion of the refrigerator cars, what part of the whole 2,500 or 3,000 cars would that line furnish?

Mr. PATRIARCHE. I think that is a difficult question to answer, because the burden of origin is with us. The disposition of the connecting line is to let the originating road get the best it can in transportation facilities. There is no particular obligation on the part of the connecting road to furnish any cars.

They want them routed over their own lines.

There is the difficulty that the railroad man sees in getting refrigerator cars from the connecting railroads. While they might furnish them a certain number, when those cars were loaded they would have to be consigned and passed over the line of the road furnishing the particular cars. And Mr. Patriarche testified, as I read to you a few minutes ago, that often those cars were loaded before their destination was fixed, and if the markets where they were originally intended to go should fail they would want to send them somewhere else, and if the goods were loaded in a refrigerator car of one line and the destination was changed to some place off the line of the connecting road they would have to be unloaded and put in cars of other lines.

Now I have read what Mr. Patriarche says, and I will take up the testimony of the shippers on the Pere Marquette line.

Mr. ESCH. What was the date of Mr. Patriarche's testimony?

Mr. URION. It was in June, 1904. The dates were June 2, 3, and 4, 1904. Mr. Gurney, who was a large shipper up in that district, also testified. I am dwelling very largely on Michigan because all the complaints that the Commission has heard have been directed to Michigan. Mr. Gurney says that he has been a shipper for a great many

ears, and with respect to the cars and the service which we have rovided under the exclusive contract with the Pere Marquette line e testifies as follows:

Mr. URION. * * * I understand that you had to ship the bulk of your fruit to hicago and Milwaukee, and these cars, with the service you get, have enabled you get other buyers in there and have made your place a competitive point and paid ou a higher price for your peaches?
Mr. GURNEY. That is the point.
Mr. URION. Do you state to the Commission that you would be able to reach these ar distant points without refrigeration and the service that goes with it?
Mr. GURNEY. I could not.
Mr. URION. You have had experience in previous years?
Mr. GURNEY. Yes, sir; and have lost a good many cars.
Mr. URION. As a matter of profit and loss to you as a business man and grower, as it resulted in a profit to you, notwithstanding the refrigeration charge, to have hose cars, as against no charge for refrigeration in the previous years?
Mr. GURNEY. Of course it has.

You remember that the Pere Marquette, in the early days, when the usiness of fruit growing was in its infancy, furnished free ice and ars wherever they could get them? I read further from the testimony of Mr. Gurney:

Mr. MCPHERSON. Prior to 1903 the Pere Marquette furnished you cars that enabled ou to market your fruit at any point on the Pere Marquette, did they not? You ould reach Milwaukee and Chicago and get all your fruit there?
Mr. GURNEY. Yes, sir; but not Detroit, and we could not get any price.
Mr. MCPHERSON. The advantage of the Armour car is that it enables you to reach oints off the Pere Marquette system with refrigeration?
Mr. GURNEY. Yes, sir.

Mr. TOWNSEND. Do you mean to say that you do not have connections with Detroit on the Pere Marquette?
Mr. URION. I do not know whether at that time the Pere Marquette ad direct connections. This is just the testimony of Mr. Gurney.
Mr. TOWNSEND. It had been so for years.
Mr. URION. This is just his testimony. I will read further:

Mr. GURNEY. Yes, sir. Boston, Columbus, Ohio, Pittsburg, Connecticut, and lbany, and when we did have the railroad company once in a while send in an rmour car it would not be seen to, and when they sent an M. D. T. car there was obody to see to it, and when it got through there was no ice in it. The Armour eople have people to see to it, and it costs them money.

I will not read all the testimony, but just the parts that are pertinent ith respect to this point.
Mr. TOWNSEND. This was the testimony taken where?
Mr. URION. In Chicago. This was all sworn testimony before the nterstate Commerce Commission. We introduced at that time in hicago, before the Interstate Commerce Commission, some 30 witesses, growers and shippers from Michigan. They examined eight or ine of those witnesses, and then said that they did not care to hear any nore and shut them off. We had as many as something like 40 or 50, nd they heard only eight or nine of them, and I am now reading you his testimony.
Mr. ESCH. As a result of that investigation, has the Commission nade any recommendations?
Mr. URION. Yes, sir. I will touch on that presently.
Mr. STEVENS. We have their recommendations here, and I will put he conclusions in the record.
Mr. URION. They listened to several growers, who were heard on he part of the complainant, and one of them had a grievance and

entered a suit, and the testimony which we introduced was solely and entirely that of growers and shippers, except the testimony of two railroad traffic managers, Mr. Patriarche and the traffic manager of the Michigan Central. I will pass on now to the testimony of Mr. Wylie:

Mr. McPHERSON. Prior to the present arrangement you were able to market your fruit in good condition at Chicago and Milwaukee, were you not?
Mr. WYLIE. Yes, sir.
Mr. McPHERSON. Or any market reached by the Père Marquette?
Mr. WYLIE. Yes, sir; but principally Chicago and Milwaukee.
Mr. McPHERSON. The only advantage you find in the Armour car is that it allows you to reach markets beyond the Père Marquette?
Mr. WYLIE. It enlarges our market.
Mr. URION. But for the ability to reach foreign markets, or bring in foreign buyers, your custom would be to ship to the Milwaukee and Chicago markets, would it not?
Mr. WYLIE. Very largely.
Mr. URION. Would that result in a congestion of the markets here and consequently lower prices?
Mr. WYLIE. It did result in congestion and lower prices.

Mr. Flood is another grower and shipper. I read from his testimony as follows:

Mr. URION. You had some experience with the use of the Armour cars in 1902 and 1903 and the payment of the refrigerator charge talked about there?
Mr. FLOOD. I know more about it from extended markets than from my own shipments. I understand this, that since we have got better service from the Armour folks we are able to extend our markets. Prior to that we had to dump almost everything into the Chicago and Milwaukee markets, and during the time we had most fruit there was a congested condition. Of course I know that since the Armours put their cars on there we have had a better system and we have buyers there. Prior to that they would say, "We can not come here to buy because we can not get cars to make our markets."
Mr. URION. Has it resulted as a practical result, the question of profit and loss, the question every business man looks at, in a profit or loss, the payment of the refrigerator charge and the service which goes with it in the use of the Armour cars to the growers and shippers in your vicinity?
Mr. FLOOD. We have been able to get more for our fruits in late years.
Mr. URION. Notwithstanding the demands of this refrigeration charge you have been able to make more money than in previous years when you had not that charge?
Mr. FLOOD. I can not tell you the charges on refrigeration, but we get better prices.
Mr. URION. And make more money?
Mr. FLOOD. Yes, sir.
Mr. URION. What other business are you in?
Mr. FLOOD. Lumber.
Mr. URION. Then you have considerable acquaintance in the vicinity you live in?
Mr. FLOOD. Yes, sir.
Mr. URION. Are you expressing the general sentiment of the growers and shippers in your vicinity?
Mr. FLOOD. I think so. I am interested in the bank and know from the depositors that the fruit growers are in very much better condition than ever before.

Mr. STEVENS. You do not ascribe that entirely to the use of the Armour cars, do you?

Mr. URION. No, sir. We make no such claim as that. We do claim, however, that the installation of these cars on the line of the Père Marquette road did better the condition of the growers and shippers on that line, and they have so testified, and there are others who would testify to it if they had the opportunity.

Mr. TOWNSEND. When were they installed on that line?

Mr. URION. In 1902; I believe I am correct about that year.

Mr. RYAN. That was the first exclusive contract?

Mr. URION. Yes, sir. They have been in effect——

Mr. RYAN. I mean on that particular line?

Mr. URION. Yes, sir. And in answer to your question, Mr. Chairman, I will read further from the testimony of Mr. Flood:

It may not be as a result of that.

Mr. URION. But the fact stands there?

Mr. FLOOD. The fact is there, and we are reaching other markets.

Mr. URION. That is all.

Mr. POWELL. Did you not have buyers in there prior to two years ago from outside markets?

Mr. FLOOD. No; I do not think we had prior to two or three years ago. It was all solicited through commission merchants, as a general thing, through Chicago and Milwaukee. I did two or three years ago go in with some of our folks and we shipped cars to foreign markets. I know we did not get much.

Mr. URION. Did they get there in good condition?

Mr. FLOOD. I do not know what the reason was, but we did not get much.

Mr. Crobin is another grower. I will read to you from his testimony, as follows:

Mr. URION. Prior to 1902 and 1903 where was the bulk of your stuff in your community shipped?

Mr. CROBIN. Most of those years, by not having refrigerator cars and buyers there to buy of us—the heft of the crop was shipped to Milwaukee and Chicago.

Mr. URION. Were they regarded as markets that were as good as outlying markets?

Mr. CROBIN. No, sir; it has been the talk of the growers that they wished they had some way they could load cars and ship them to different points so as to relieve the glut that happened at Milwaukee and Chicago.

Mr. URION. You got that in 1902 and 1903?

Mr. CROBIN. Yes, sir; in 1902 and 1903.

Mr. URION. Did it result in reaching the East?

Mr. CORBIN. Yes, sir.

Mr. URION. Did it result in additional prices and enable them to get better prices?

Mr. CORBIN. Yes, sir. The way I look at it, the first thing for a buyer, in going into a locality to buy fruit, is to know whether the fruit is there. After that he wants to know what his facilities are for shipping. If he finds the two conditions, that the fruit is there and the conditions are such that he can get plenty of cars to ship out, he will go there and locate. The more buyers there are in a locality necessarily the price goes higher to the grower; they receive more money for the fruit. I think the last two years the growers have got considerably more for their fruit than they would have if it had been confined to the Chicago and Milwaukee markets.

* * * * * * *

Mr. URION. You are well acquainted and have lived in the community you now live in for some considerable time?

Mr. CORBIN. I have lived there since 1865.

Mr. URION. Are you expressing the general sentiment of the growers in your vicinity?

Mr. CORBIN. I am. Mr. McGuire came to me about three weeks ago and requested me to talk with the different growers with regard to how they liked the service of the Armour car line. In that way I talked with possibly twenty of the different growers. They all thought we had the best service of any we ever had.

Right in that connection I will say that Mr. McGuire is the special agent for the Pere Marquette road, and there had been some complaints made by Mr. Fergusson, from Duluth, and they sent their special agents out among the growers and shippers to find if there was any valid complaint against the cars they were furnishing, or against the refrigeration service.

Quoting further from the testimony of Mr. Corbin:

Mr. URION. Taking all that in consideration, all you have testified to, will you tell the Commission whether you regard the refrigeration rate of the Armour car line as excessive?

Mr. CORBIN. From a business point of view, rather than to go back to the way it was before we had this, I think the rate is not exorbitant at all. I would rather pay the prices to-day and be sure of the service we get.

Mr. TOWNSEND. May I ask you, do you make special contracts with the individual shippers?

Mr. URION. Yes sir. I will reach that presently, further along. It is an implied contract. It is not a written contract in all cases.

I will now read from the testimony of Mr. McCarty, another grower and shipper:

Mr. URION. Will you state to the Commission your experience in the few years prior to 1902 and 1903, when Armour cars were not in use there, and your later experience in 1902 and 1903, when the Armour cars were there, in your own language, in respect to the cost, profit to the grower and shipper, and so on? Just state it in your own language.

Mr. MCCARTY. I have been in business there about forty years, and I have been a peach shipper, and, of course, we have had lots of trouble shipping peaches and getting them shipped to a distance. We have had to ship them locally a great deal and met with loss. Since the Armour car service went in we have had good success with our peaches. In 1902 I shipped 45 cars and made money on all of them.

Here is one shipper with 45 cars. I want to contrast that with the testimony of the principal complainant here as to the number of cars he handled. I will reach that presently. I will quote further from the testimony of Mr. McCarty:

In 1902 I shipped 45 cars, and made money on all of them. I shipped 7 by the Grand Trunk. I got the cars free and paid for the icing. I lost on all of them. One I sold on track.

Commissioner PROUTY. Does the Grand Trunk use the Armour car now?

Mr. MCCARTY. I do not think they do. I find it pays me, as to the icing service, to have some one look after it. It pays better prices for the peaches.

We have a contract with the Grand Trunk road now which we did not have at that time. Continuing Mr. McCarty's answer:

It pays better prices for the peaches.

Commissioner PROUTY. Where did these carloads go to?

Mr. MCCARTY. New York, Pittsburg, Elmira, N. Y., and different places. I have a list of them in my pocket.

Commissioner PROUTY. I did not care for a list; I only wanted it in a general way. You could reach the same points by the Grand Trunk?

Mr. MCCARTY. Yes, sir; and I did.

Commissioner PROUTY. Rather than patronize the Grand Trunk, where you get the cars for nothing, you preferred to use the Armour cars and pay their charge?

Mr. MCCARTY. Yes, sir.

Commissioner PROUTY. Did you pay the full charge?

Mr. MCCARTY. Yes, sir; from $35 to $50. It paid me to do it. I shipped to Mr. Fernald, as good a man as there is in New York. He said "Don't ship any way but in the Armour cars; I would rather pay it myself."

Commissioner PROUTY. What kind of cars did the Grand Trunk use?

Mr. MCCARTY. Any kind they could get.

Mr. Loomis is also a grower and shipper. He says that he has been shipping for twenty years. I will quote from his testimony as follows:

Mr. URION. You have heard the testimony in respect to these refrigerator rates, service, etc. Will you state to the Commission in your own language and as briefly as you can your experience?

Mr. LOOMIS. My experience has been the same as the rest of them. I have been shipping twenty years. The shipments have got to be taken care of as they go through, and until Armour & Co. took care of them, we did not have that service.

Mr. URION. Has the profit to the growers and shippers in your community been enhanced by the use of Armour cars, notwithstanding the refrigerator charges?

Mr. LOOMIS. It has.

Mr. URION. They have made more profit by the payment of the refrigerator charge and getting the service than they did under the old arrangement?

Mr. LOOMIS. Yes, sir; because buyers came in there and we could not have them when we did not get the cars.

Mr. URION. How long have you lived in that community?

Mr. LOOMIS. The last twenty years.
Mr. URION. Have you talked with the growers there to some extent with respect to the refrigeration charges?
Mr. LOOMIS. I have.
Mr. URION. Do you believe you are expressing the general sentiment and feeling of the community?
Mr. LOOMIS. I know I am.

Gentlemen of the committee, consider, if you please, all these statements of California, Michigan, Georgia, and North Carolina growers on the advantages to them of exclusive contracts, and contrast their statements with the statement of Mr. Mead, who testified at the hearing in Chicago that he had not handled Michigan peaches since 1898. And yet he comes in here and professes to know all about the Michigan situation. That was four years later; and yet he directed his remarks to the situation and conditions in Michigan. His testimony I will read to you:

Mr. DECKER. Have you been in the habit yourself, or your firm, of handling Michigan fruit?
Mr. MEAD. We are not large handlers of Michigan fruit. The last we handled was in 1897 or 1898.

I would say that it has been to the Michigan district that he has referred in all that he has had to say before this committee. I think it is unnecessary for me to consider further Mr. Mead's testimony before this committee, in view of the developments brought out by Mr. Robbins's statement. To do so would be to question the intelligence of the committee.

I request you to contrast also, if you please, the statements of these same growers and shippers with the statement of Mr. Ferguson, who applied his remarks at the Chicago hearing entirely to Michigan and to the Pere Marquette contract. He testified at that hearing, under pressure of cross-examination, that his firm had handled during the season in question—that was 1902—out of a total Michigan shipment of some 7,000 cars, only 10 cars. Upon being pressed further on cross-examination as to how much fruit they handled from all over the country, he said he thought between 40 and 50 cars.

Nearly every grower who has testified from Michigan shipped more than 10 cars, and the testimony that has been listened to by this committee, of the gentlemen from Georgia and West Virginia as to their shipments, shows that they run up as high as from 20 to 300 cars.

Mr. Ferguson also testified that the number of cars handled by his firm from all parts of the country was between 40 and 50. I ask you simply to compare his interest with that of the large growers, and to compare his interest and knowledge with the interest and knowledge of half a dozen or more shippers from peach and berry growing districts, each one of whom shipped from his own little district anywhere from 10 to 300 cars a season, and to contrast his experience and interest with the interest and experienee of those who are directly growers and shippers.

Mr. STEVENS. I thought that Mr. Ferguson handled fruit on his own account.

Mr. URION. He handled, I believe, between 40 and 50 cars.

Mr. STEVENS. I do not know what his testimony may have been on that hearing in Chicago, but he testified here that he had handled fruit on his own account.

Mr. MANN. He testified under oath at this hearing.

Mr. STEVENS. He testified that he bought on his own account. Here is Mr. Ferguson's testimony. He was asked:

How many carloads of fruit did you buy in Michigan last year?
Mr. FERGUSON. I did not buy very many.
Mr. URION. About how many?
Mr. FERGUSON. I could not tell you without the records.
Mr. URION. About how many?
Mr. FERGUSON. Possibly 10 or 12 cars.
Mr. STEVENS. For what season was that?

Mr. URION. 1902 was the heavy Michigan season—the season which was under examination—which was under fire, at the Chicago hearing.

Mr. RYAN. Mr. Ferguson represented here a great many commission men.

Mr. URION. Yes, sir. I want to dwell on that presently, and this perhaps is an opportune time to do so. He stated that he represented some 12 associations. Two of those associations were fruit associations. One was the Western Fruit and Produce Dealers' Association and another was a national association. Eight out of those 12 organizations were retail grocers and retail butchers in Wisconsin and in Minnesota. Now, retail butchers and retail grocers do not use private cars as receivers in carload lots either of fruit or vegetables. I will read you the names of some of them.

The Duluth Fruit and Produce Exchange has 11 members, according to my information, which I sought after hearing his statement here. The Duluth Commercial Club, which is an organization of the business men and professional men of Duluth, has a thousand members. They have no interest in and know nothing about the receiving or shipping in private cars. The Superior Retail Grocers' Association has 56 members. The Duluth Retail Grocers have 130 members. The Lake Superior Butchers' Association has 162 members. The Minneapolis Butchers' Association has 125 members.

I have not been able to get the number of members of the Wisconsin Master Butchers' Association, but I have a telegram here which says, "Mr. Ferguson has not been authorized to represent the Wisconsin Master Butchers' Association." I merely mention this in passing. He came here representing a dozen associations. I have shown you the size of them, and I have shown you that 8 of the 12 are retail grocers and butchers.

Mr. RYAN. Did he represent all of those associations, the names of which you read there?

Mr. URION. Yes, sir; those are the associations he said he represented.

I do not think it is necessary to comment further on that matter. I think you know that retail grocers and butchers are not engaged as shippers and receivers of fruits and vegetables in carload lots.

While you, gentlemen, most of you have not heard the full testimony respecting exclusive contracts, it seems to me unnecessary for me to say anything more in justification of them. I think I have shown that the exclusive contracts are not only lawful—the Supreme Court has said that they are—but they are called necessary by the growers and shippers who are most affected, and who, as a general rule, even petition the railroads to make them, as was the case in North Carolina and in Georgia, where they joined in the preparation of the actual contracts, as was testified to here by Judge Gober and Mr. Hale.

Mr. RYAN. When you speak of exclusive contracts, you mean with the carrier?

Mr. URION. Yes, sir; with the carrier for the rental of the fruit and berry cars.

Mr. TOWNSEND. Does the shipper, then, have control of the cars?

Mr. URION. Yes, sir; I have a copy of this exclusive contract with me, which I will be very glad to read you.

Mr. STEVENS. You were to give us a list of the roads with which you had contracts. Have you that?

Mr. URION. Yes, sir; that is now in preparation; and there are some other things that were asked for that are also in preparation and will be ready shortly.

Also, there is the testimony of the North Carolina growers. Some of them were here the other day, I would say, and could not be heard, and were obliged to go home.

Mr. TOWNSEND. When you contract with the railroad, you make a contract with them for such cars as they need?

Mr. URION. Yes, sir; the full equipment that is necessary in the carrying of the fruit and berries. That is the only contract that is exclusive, and during the season.

Mr. TOWNSEND. Can you supply them always?

Mr. URION. We always have supplied them. Occasionally there are times when we fail, in which case we are liable to the growers. That has happened occasionally.

Mr. TOWNSEND. The car company is liable to the growers?

Mr. URION. Yes, sir. There was testimony here by some one who did not know, to the effect that the railroads were liable; but we are liable to the growers for failure to furnish the facilities, without regard to the car or the refrigeration.

Mr. TOWNSEND. The railroad has the exclusive disposition of the car after you furnish it?

Mr. URION. Yes, sir. We furnish the cars to the railroad.

Mr. TOWNSEND. Then, aside from having to furnish the cars——

Mr. URION. We furnish the refrigeration, an entirely different and independent service, which I will touch upon presently.

Mr. TOWNSEND. Do you know anything about the contract which the railroads make with the grower or shipper?

Mr. URION. For the use of the car?

Mr. TOWNSEND. Yes.

Mr. URION. I understand that the cars are furnished to the shippers the same as they furnish cars which they own. No additional charge is made for the use of these cars by the carrier to the shipper.

Mr. TOWNSEND. I want to get that clear in my head once more. After you make the contract with the railroad company or with the carrier, those cars, to all intents and purposes, belong to the railroad company?

Mr. URION. Yes, sir.

Mr. TOWNSEND. And they have the exclusive control of them?

Mr. URION. Yes, sir.

Mr. TOWNSEND. And determine who shall have them?

Mr. URION. Yes, sir.

Mr. ESCH. You say the exclusive contract only refers to fruit and berries?

Mr. URION. Fruit and berries; they are the only cars we furnish under the exclusive contract.

Mr. ESCH. That would exclude all vegetables?

Mr. URION. No, sir; in some districts they are furnished for vegetables also, but principally for fruits and berries.

Mr. ESCH. I know Mr. Ferguson referred to a letter from one of the shippers in reference to a carload of tomatoes from Arkansas, so that tomatoes would be included in the list.

Mr. URION. Yes, sir. There are sometimes exclusive contracts made for the carriage of vegetables, as well; but I speak of fruit and berries, because the larger portion of the cars are used for that purpose.

Mr. TOWNSEND. Is your icing contract a separate contract with the carrier?

Mr. URION. Yes, sir. I will reach that directly.

Mr TOWNSEND. And that is under the same clause by which you are bound to the shipper or grower?

Mr. URION. Yes, sir. We are liable to the shipper if we fail in refrigeration. The railroad binds us to furnish that service to the grower and shipper.

Mr. TOWNSEND. Are you a party to the contract that the railroad makes with the grower or shipper when it gets those cars?

Mr. URION. No, sir; we are not.

Mr. TOWNSEND. Are you going to explain, then, how you are liable?

Mr. URION. Yes; later on I will reach that, under the head of refrigeration.

I now pass to the third alleged wrong or abuse, namely, exorbitant charges by the private car companies for the special service of refrigeration rendered shippers. I have touched very largely on this point already under the second head, so I will not read to you again the testimony of the Michigan growers.

Mr. TOWNSEND. I do not care to have you repeat anything that you have already gone over.

Mr. URION. No, sir; I shall not repeat. On this point you have listened to Mr. Robbins, who went into detail as to how a rate was determined, as to the many things necessary to consider in making a rate, as to the great hazards and risks of the business, and I shall attempt only to slightly amplify his remarks on the different requirements of the business which are necessary in order to render the service as it should be rendered in order to be of profit and service to the grower and shipper. The car line maintains at many hundred places in the different States icing stations or ice houses where the ice either from natural lakes or from artificial ice factories is stored. At each place a corps of men are employed, machinery for transferring the ice from the ice houses into the bunkers of the cars is maintained, and in addition thereto it owns and operates in different States artificial ice factories, and in other States natural lakes from which ice is cut, all of which is used at the many local points for the refrigeration of the contents of the cars when the same is so requested by the shipper.

The business is one of great hazard. Ice must be stored at the different localities where fruits and berries are raised, and in the different States between that section and the principal markets of the country, long in advance of the maturity of the crop and in sufficient quantity to anticipate the requirements of the shippers. At the present time

the ice houses in Georgia are being filled in anticipation of the next peach crop, which does not mature until in August.

Contracts have been entered into with ice factories in that State for many thousand tons of ice, which is now being manufactured and stored, and so at different points in different States from that section to the principal markets. There may not be a car of peaches moved from Georgia next season. Who can foretell whether or not there will be a crop? The same condition exists in every fruit and berry section of the country.

It has been testified, I believe, that in 1899, up to the last of March the ordinary crop of peaches was expected in Georgia, and then a frost came along and cleaned it out and there were very few cars of peaches shipped from Georgia that year.

Mr. TOWNSEND. And what did you do with the ice that you had?

Mr. URION. It all melted away. It could not be used.

Mr. TOWNSEND. Did you not dispose of it for any other purpose?

Mr. URION. No, sir; it all, practically, melted away.

Mr. ESCH. Now, your ice is oftentimes not where you desire it for refrigeration purposes, and you have, therefore, to transport it by rail.

Mr. URION. Yes, sir.

Mr. ESCH. In that transportation do you have any preferential rates with the railroad companies with which you make the exclusive contracts?

Mr. URION. No, sir, we do not.

Mr. ESCH. Do you pay the ordinary charges for that transportation?

Mr. URION. We pay the ordinary and regular rate for the carriage of that commodity.

Mr. TOWNSEND. You have ice houses on the railroad property?

Mr. URION. Frequently we have. We frequently rent land from the railroad company, on which we erect our ice houses. That is not always so but it frequently is so, because they generally have to be located along the right of way. If the ice is not used, if the labor—and it is skilled labor to a large extent, kept upon the pay roll the year around—is not required, the car companies suffer great loss.

As an illustration of the risks which we are obliged to take, I may mention again the Salt Lake and San Pedro Railroad, Senator Clark's road, running from Salt Lake to Southern California. We are building down there now to supply the refrigeration on that road an artificial ice factory on the edge of the desert at a cost of $75,000. There are no fruits of any consequence raised along the line of that road now. Of course, the road will carry some fruit from southern California, but it is hoped that the fruit country along the line of that road will be developed, and our contract for the exclusive use of our cars on that road required us to put up this refrigeration plant and be prepared to meet the needs of the shippers in that respect.

Mr. ESCH. Where you store ice along the right of way, either from a manufacturing plant or a natural lake, either one or the other, do you maintain a crew of men the year around?

Mr. URION. Not at all of the points; no, sir. The principal crews are maintained in the field—I mean in the peach-growing district—at the season when the crop is being harvested. In many parts of the district we load these cars for the shippers. That is another service that is performed.

Mr. ESCH. Then the work would be at the time of the shipping of the crop, and at the time of the harvesting, of the ice crew?

Mr. URION. Not altogether.

Mr. ESCH. Of course, you may have a custodian there——

Mr. URION. No, sir; we have men there, but they are the common ordinary laborers, and are not included in my statement here. I refer principally to the men in the district. The contracts between the railroads and the car company bind the latter company to perform the service of refrigeration for the shipper if he shall require it, we being held responsible to the shipper in case of failure. And there is another element of risk. Large sums of money are paid out each year, legitimately, to shippers for failure to properly refrigerate. The refrigeration is done by our men, and frequently it is done improperly, and it will sometimes happen that the cars arrive at their destination with the fruit in bad condition, and if it is due to improper refrigeration, then we are liable to the shipper and have to meet his claim.

Mr. STEVENS. How can you be liable to the shipper when you have no contract with the shipper?

Mr. URION. I am going to touch on that quite fully later on. We are liable and, in fact, make contracts with the shipper for refrigeration. It may be an implied contract. But I will touch on that point very fully.

Mr. TOWNSEND. I wish you would explain that fully, because it is a very important matter, and I would like to know about it, in connection with this other.

Mr. URION. Very well. Mr. Robbins has well said that the Armour car line alone has invested at local points in the different States more than $15,000,000 in tangible property. I venture the statement that if all private car companies' tangible property is considered, it amounts to over $100,000,000. This is the industry which Congress is now asked to legislate out of business. To tear down the industry will not result in benefit to the public, but will result in the building up of another of like character by a few financially strong railroads.

Who are the best judges of whether a charge for service rendered is exorbitant or reasonable? Certainly the ones for whom the service is performed—the growers and shippers. It is unnecessary for me to repeat what the growers and shippers of the fruit and berry district of North Carolina said and did, and I have already read to you from the testimony of the Michigan growers who appeared before the Interstate Commerce Commission in Chicago last May, what they had to say on the subject.

I make the broad statement that only those who so far have been heard to complain are those who have the least interest in the matter, and who have absolutely no actual knowledge of local conditions or of general conditions, which is the basis for all charges made, but whose extravagant statements, in many respects bold misstatements (as has been demonstrated to the committee), are based upon no firm foundation, but rather upon lack of knowledge, and upon theories and mental calculations. I want now to read you an extract from the Hartford Day Springs, a little country paper published up in the heart of the Michigan district, which appeared after this general hearing of last year.

HE FAVORS ARMOUR CARS—H. L. GLEASON TALKS OF THE PROPER REFRIGERATION FRUIT.

There was a lively interest taken in the Interstate Commerce Commission sitt in Chicago last week. The inquiry was instigated by the National League of Comm sion Merchants against Armour & Co. for discriminating and exhorbitant char for refrigerator cars.

Looking at it from a commission merchant's standpoint, it would seem to b hardship to them, for it certainly has a tendency to a more general distribution of fruit, getting it nearer the consumer, and against concentrating it to the large cent and in the hands of the commission men; but in this, as well as other subjects, th are two sides.

As a grower and shipper I certainly know that the Armour cars, with their ac tional charges, have been the cheapest cars I have used in the last six or seven ye I have used upward of 250 Armour cars, and the loss has been only nominal c sisting of a partial loss of the upper tier of one car, while in the use of other car the number of about 150 during the same time, the loss from poor refrigeration an poor system of handling has been in the thousands of dollars, some of which has b made good to me by the railroad company, but the heft of the loss falling on r Most of the cars outside of the Armour cars have too small ice capacity to thoroug cool a car of peaches. They may carry them through in condition to sell for a pr but not so high a figure as they would had they been in cars of large ice capacity thoroughly cooled.

There are other advantages in using Armour cars: You can always know that can get them; that they will be in good shape to load and not have to be condem as not fit to use, leaving your fruit on your hands; you know that your car will h proper care in transit and not be allowed to pass an icing station without being loo to as to the ice, and the waste pipes kept free.

Then you may be loading a western-system car for Minneapolis or some other p near; you find that the Boston market is better; you run up a stump generally w you ask your agent to allow you to ship the car over any other line except the that the car belongs to. But if you have an Armour car you can ship it in any di tion and know you can take advantage of any market.

It seems to me that the fault of high charges is not so much with the Arm company as with the railroads. The latter ought to give the shipper of fruit as a rate as they do on eggs or like perishable commodities requiring quick transp tation. If you ship a car of eggs worth $1,500 or more they will charge you sec and sometimes third class rates, with no one to help stand any responsibility in c of loss, and eggs require as careful handling as does the peach.

But if you are shipping a car of peaches worth $300 to $400 and backed by Arm & Co., as far as proper refrigeration goes, they will charge you first-class rate one and a half first-class rate east of Buffalo unless crated. If the railroad comp would give us even second-class rate we could afford to pay Armour & C charges. I have not a dollar to give Armour & Co., but I am working for Glea and family, and until the railroad company can give us some system of refrigerat that we can rely on, I shall shake hands with the representatives of Armour & every time they come here in the peach season.—H. L. Gleason.

Mr. RYAN. You ship peaches in carload lots from the Michi market?

Mr. URION. Armour & Co.?

Mr. RYAN. Yes, sir.

Mr. URION. I want to make the statement again that Armou Co.——

Mr. RYAN. I mean your cars carry them?

Mr. URION. Oh, yes, sir; yes, sir.

Mr. RYAN. Do you have a fixed charge for icing those cars?

Mr. URION. Yes, sir; a printed schedule.

Mr. RYAN. Is that based on the number of tons of ice used?

Mr. URION. No, sir.

Mr. RYAN. Do you have any calculation of it?

Mr. URION. It is based on the combination of conditions which R Robbins testified to very fully the other day. I am not a practi

man, and would not undertake to answer as to that, but he answers that question very fully.

Mr. RYAN. I did not hear him. I was wondering what price per ton was charged.

Mr. URION. It runs anywhere from $2.50 to $8 a ton.

Mr. RYAN. In a place like Buffalo or Cleveland, about what would you calculate?

Mr. URION. I could not answer that. Mr. Robbins has answered all those questions in detail. He is a practical man and knows the features of it.

Mr. TOWNSEND. Who wrote that article which you have just read?

Mr. URION. A man named H. L. Gleason, a grower and shipper in that district. I know the charges that have been made here, that these growers and shippers were brought down at our instigation to the hearing in Chicago. We did go for them, and asked them to come down, and it was perfectly proper that we should. We were brought in there without any idea of the charges against us. It was a general investigation. There was no formal complaint against us, and we did not know what we would have to meet, and we sent our men out among the growers and shippers to get as many of them as were satisfied, and to ask them to come down and testify, and they did it.

I have here another article, which I would like to have inserted into the record, although I will not take the time to read it, which appeared in the Oceana Republican, of Oceana, Mich., on Saturday, June 18, 1904. This was written by a man named T. S. Gurney.

The article referred to is here printed in the record as follows:

THE ARMOUR CAR LINE SUIT.

The Fruitman's Guide, of June 11, says "The Complaint" was that of the Michigan fruit growers and shippers against the Pere Marquette and Michigan Central railroads. They made a little error in the title. They should have said "the complaint was that of the commission merchants against the fruit growers and the P. M. and M. C. railroads. The michigan fruit growers are satisfied with the Armour car line service and charges. The commission merchants are not satisfied because the service that the Armour car lines give enables the fruit grower to put his fruit in good condition on almost any market at profitable prices, and the commission men don't get a chance to handle the grower's fruit on a glutted market at ruinous prices. From about 1897 to 1901, inclusive, we had no good refrigerator service, and the most of the growers had to sell their fruit through commission men on a glutted market at ruinous prices, and many growers with fine crops wound up the season in debt for their baskets, while many good markets were bare of fruit. The fruit grower wants protection. The commission man can take care of himself. He has nothing to invest. Since the Armour car lines came, in 1902, the growers have received good prices and have made money.

The fruit grower, to be successful must have—

First. Perfect refrigerator cars when needed.

Second. The cars must be properly iced and cooled before the fruit is put in.

Third. The cars must be properly iced in transit when needed.

Fourth. A man along the route to see that the cars are kept moving.

A man at the destination of the car to report condition when opened.

The fruit grower can not ship to all points successfully and have poorer or less service than is heretofore mentioned. The service must be perfect. The Armour car lines give us the above service. Perhaps the service that we require is worth all they charge, and that their charges are as cheap as such services can be rendered. Until some other company or car line can furnish the grower with the same services as the Armour car lines give us for less money, we are satisfied and want no change, and in our opinion if the Armour car lines should be ordered off the road now, one-half of the fruit in western Michigan would rot on the ground and the other half sold at ruinous prices on a glutted market.—T. S. Gurney.

Mr. STEVENS. You do know that there were threats made against some of the growers by some of your agents?

Mr. URION. There were no threats. That matter was very highly magnified. One of the subordinates of the company met an old friend of his who had come down there, and jokingly they passed some words, and that was taken and magnified into a mountain.

Mr. STEVENS. Then you deny that occurrence, that that did actually occur, that your agent did make an implied or direct threat?

Mr. URION. I do, sir. I deny that he made any threat at all. I took him over to the office and examined him about it, and I believed his story, that he did not make any such threat, and I said to the Commission at that time that we would not tolerate anything of the kind. It was done by a subordinate who had no authority in the premises at all, if he had said it. If you only knew some of the things that are being resorted to in this fight which is being made by the middlemen you would not be surprised at some of the misstatements.

I now pass to the consideration of an entirely different phase of the subject. Mr. Robbins said to you, and the statements of others to which you have listened confirm his statement, that the business of the private car companies is twofold. First, the furnishing to railroads special cars of the refrigerator type, used by the railroads more especially for the fruit and berry traffic. Second, the rendering to the shipper in those cars a special independent service, that of refrigerating the contents, when the same is required by the shipper.

In this connection, it is not necessary that all fruits should be refrigerated. Large quantities of grapes are shipped from the western New York grape district not refrigerated at all. They are simply put into the cars and shipped under ventilation.

Mr. MANN. Are they generally shipped in your cars?

Mr. URION. Whenever they can get them. And of late years we have made exclusive contracts with the railroads operating in that section for the use of our cars. They take our cars and furnish them to the shipper, who uses them without any charge whatever from the railroad company, and as there is no refrigeration there is no charge made by the Armour car line. The shippers in those cars get the use of them just the same as though the cars were owned outright.

Mr. STEVENS. On the regular schedule of rates?

Mr. URION. Yes, sir.

The bill before this committee is to declare the private-car companies to be common carriers. According to the generally accepted definition a common carrier is one who undertakes for hire or reward to transport from place to place the goods of those who choose to employ him. I believe that is the definition generally accepted and recognized in the courts. Under this definition three things are necessary to charge one with the liability of a common carrier. First, he must be a transporter; second, he must make a contract, either express or implied, of transportation; third, he must receive a compensation for transportation.

Transportation is an inseparable incident of the undertaking of a common carrier. Now, the car companies receive no compensation, make no contracts of carriage or of transportation, nor do they transport anything. All they do is, first, to furnish to railroads special cars of the refrigerator type, to be operated by the railroads more especially for the transportation of the fruit and berry crop; second,

to render to the shipper in those cars a special independent service—that of refrigerating the contents when the same is required by the shipper.

How, then, can Congress legislate into the realm of common carriers one who, in point of fact, is not a common carrier? The Federal Constitution gives to Congress power to regulate commerce between States. It denies Congress the right to pass laws impairing the obligation of contracts.

I state this merely because it will develop later on that these exclusive contracts run, some of them, for many years to come. They are long-time contracts.

Let me first proceed to discuss the two-fold undertaking of the business of the private car companies, in the order just presented. Railroads may secure their equipment either by purchase or hire, so long as they furnish to the shippers on their respective lines the equipment necessary to meet the demand, and such equipment is of the character required for the business which they hold themselves out to carry.

The Supreme Court of the United States, in the Express cases, 117 U. S., 1, 24, 25, held—Mr. Chief Justice Waite delivering the opinion—among other things, as follows:

> The railway company performs its whole duty to the public at large and to each individual when it affords the public all reasonable express accommodations. If this is done the railroad owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always providing they are such as to insure reasonable promptness and security.

No legislation, nothing short of absolute Government control, can change this, for if it were within the power of Congress to say that the railroads of this country shall own each and every car of their equipment, then Congress could also legislate as to where they should buy their cars and how much they should pay for them. The private-car companies are owners of special cars needed by railroads at certain seasons of the year, and only at certain seasons, and rent these cars to the railroads under rental contracts, for which they receive certain mileage, usually three-quarters of a cent to the mile. The railroads are thereby enabled to secure the necessary special equipment suitable for the transportation of fruit and berries for a short time—that is to say, during the fruit or berry season—in the locality through which the railroad operates.

These cars thereby become a part of the equipment of the railroads and are furnished to the shipper without any charge whatever for the use thereof. They are furnished just the same, under the same conditions, as are the cars which the railroads own outright. The contents of the cars, when loaded, are carried under the same tariff charges for transportation. The cars are, for the time being, out of the dominion and control of the car companies and under the dominion and control of the railroad that operates them.

The contracts of rental require the car companies to furnish to the railroads cars of the special character necessary for the carrying of fruits and berries, and in sufficient numbers to move the crop, be it great or small, binding the car companies to respond in damages for failure in this respect. This insures to the shipper at the proper time a sufficient number of suitable cars in which to move his crop. Bear in mind that the car companies neither transport the fruit or berries,

nor make a contract to transport the fruits and berries, nor receive a compensation for transporting the same. All they do with respect to the cars is to rent them to the railroads, being, in short, a car livery.

Mr. TOWNSEND. Who pays the taxes on those cars?

Mr. URION. The Armour Car Line.

The great benefit to the public, and even to the railroads themselves, can be shown by taking as an example Georgia, though the application fits to a greater or less degree every fruit and berry section in the United States. In that State the peach crop is moved in from four to six weeks; and the bulk of it is moved in about three weeks, although it strings along over six weeks. That peach crop required last year 4,000 individual cars, specially constructed for carrying fruits and berries. These cars, it may be well to say, can not be used in general freight, and they are not used, except in rare instances.

The railroads sometimes appropriate them and load them with light stuff. The cost of these cars at a fair valuation is about $1,100. But for the private car companies who are able to furnish the equipment required, at the time required, and of the special kind necessary, the three railroads that operate in Georgia in the peach district would be compelled to invest nearly $4,500,000 in the cars necessary to move that crop, for which there would be no use to which the railroads could put them on their own lines of railroad for the other forty-six weeks of the year. They would have to remain idle, if the suggestion which has been made to this committee is carried out that all the railroads be forced to own all their own cars of every kind, nature, and description.

If the railroads were able in the first place to invest such an enormous sum in cars for which they would have such a limited use for only a few weeks in the year, somebody would have to pay the interest on the investment, and who would it be but the shippers—the public? If the private car companies are to be legislated out of existence, and the large amount of actual money that is invested is dissipated, how are the public to be benefited thereby? You have been told: "Make the railroads own their own cars," but that is impossible, for it is well known to this committee that the fruit and berry sections are widely scattered all over the United States, and the seasons when they are at a marketable maturity last but a few weeks.

It is also well known to this committee that many times there are years of complete failure, and in other years a small crop, and in still other years extraordinarily large crops. How can one railroad meet these extraordinary conditions. One year they may require a thousand cars. The next year when the crop began to move it might be found that 1,500 cars were necessary. As an example of that, I will ask you to recall the testimony about the crop of last year. Last year in Georgia, up to the time the crop began to move, it was thought that there would not be over 4,000 cars of peaches move out of the State; but after they began to move it was found that the estimate was a thousand cars short, and a little over 5,000 cars of peaches went out of there, instead of 4,000, as was anticipated.

Five years ago, up to within a short time of the maturity of the peach crop in Georgia, the ordinary crop was expected, but, as is well known, there was a late frost that killed the fruit, and practically no peaches were moved out of that district because of the crop being

wiped out by this act of God. The reverse occurred last year, as I stated to you.

I ask again, could any railroad own cars of the character and sufficient in number for the carrying of peaches—provide against such a contingency, to say nothing of the enormous outlay of money required?

It is well known that there are more uncertain crops in this country than fruits and berries, and it is only because of the private car companies that the railroads all over the United States are able, by reason of arrangements or contracts, to provide against all these contingencies. The private car companies rent to the railroads, first in one section as the crop matures, and then in another as the crop there matures, and so on around the circle. It is due to the private car companies that the fruit and berry industry of this country has been developed to its present enormous proportions.

That was touched on very fully, showing the growth of the shipments from California and Georgia. I will not go into that, because it is a matter of record and can be inspected. If any such legislation as this committee has been requested to enact, or any similar legislation, could under the powers of Congress be enacted, which would be constitutional, it would lead to but one result, the forcing of two or three or more of the financially powerful railroads to do, through a bureau of the combined railroads, what the private car companies are to-day doing, furnishing these special cars to other railroads for the short season required. There could be no other result, for it is impossible that all the many railroads operating in this country own all the special cars that may be required for the limited time that they could be used for fruit and berry carrying. Would the grower and the shipper or the public be benefited at all by this change; and will Congress legislate to crush out one industry to further the interests of another?

Is it commerce between the States for one to own cars and rent them to the railroads who operate them as their own, the owner thereof having nothing whatever to do with the operation of the same, making no contract of transportation—transporting nothing? If this is commerce between States, Congress can enact a law declaring such owners to be common carriers and also placing them under the jurisdiction of the interstate-commerce act. Why may not the builders of cars for railroads be also declared to be common carriers and placed under the interstate-commerce act? The answer seems to be plain—because neither enter into contracts for transportation, neither transport anything; the most that can be said is that they furnish a facility in aid of transportation; but, as I shall show you later, by authorities of our Federal Supreme Court, this is not transportation.

Take the liveryman who may be located near a State line—in East St. Louis, for example—who hires his horses and wagons to one who takes them across the line into another State—Missouri—and pursues his vocation, which may in itself be interstate commerce. Does this subject the liveryman to interstate-commerce control, and can he be declared to be a common carrier unless he himself undertakes the transportation of something for a compensation? The answer, it seems, is plain. He can not be so declared. Is the owner of the private cars, in furnishing them to the railroads, more than a car liveryman? Where is the difference?

Mr. ESCH. Right there, I think you used the word "facility," did you not? You spoke of facility as not being transportation?

Mr. URION. I spoke of it as an aid, an incident, to transportation. A thing may be an aid or incident to transportation and yet not be transportation itself.

Mr. ESCH. You are aware of the language of the original interstate-commerce act, in which it is declared that the term "transportation" shall include all instrumentalities of shipment or carriage?

Mr. URION. Yes, sir.

Mr. ESCH. Would you differentiate your case under the language used in that act?

Mr. URION. Yes, sir. If the car is an instrumentality it is simply furnished to the railroads who operate it, and they operate it as an instrumentality of commerce. It is not an instrumentality of commerce until it is put into operation by the railroads.

Mr. STEVENS. Now, the testimony shows and your contracts show that the first thing you do is to ice the car initially?

Mr. URION. Yes, sir.

Mr. STEVENS. The second thing you do is to load the peaches?

Mr. URION. Yes, sir.

Mr. STEVENS. And the third thing you do, then, under that contract is to reice them in another State?

Mr. URION. Yes, sir.

Mr. STEVENS. And so on, from one icing station to another, all the way through?

Mr. URION. Yes, sir.

Mr. STEVENS. Now, is not that an instrumentality?

Mr. URION. Our supreme court in the Knight case, 192d New York, page 21, says that it is not. That was the cab case in New York, and I will quote from it in answer to that, although it is a little further along—Mr. Justice Brewer's opinion:

> On the other hand, the cab service is exclusively rendered within the limits of the city. It is contracted and paid for independent of any contract or payment for interstate transportation. If the cab which carries passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to his carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses also engaged in interstate commerce, and where will the limit be placed?
>
> It is the character of the service, not the character of the carrier, that determines whether it is interstate commerce or not.

Would not the result have been the same if the service had been performed at an intermediate point—at Buffalo, Pittsburg, or Chicago—for the transportation from one railroad station to another of passengers en route, say, from New York to the Pacific coast, especially if the cab or omnibus service in question were being conducted by a third party? In that event the fact that the person rendering this special service did so pursuant to a contract or other arrangement with the railroad company would be wholly immaterial.

That is also borne out by the case of Munn *v.* U. S., 94 U. S., 113, and the case of Kentucky, etc., Bridge Co. *v.* R. Co., 37 Fed. Rep., 567. Further along I will touch on that fully. I have devoted one branch of this argument to the question of whether or not the railroads can be compelled to furnish this refrigeration. I want first to deal with the cars, and when I have dealt with the cars, then I will

deal with the refrigeration feature, and I will try to show you that the refrigeration is a local, independent service, in aid of, but not a part of, the transportation, and after leaving that subject I will then take up the third question, as to whether or not the railroads can be compelled to furnish this refrigeration. And I would then like to be permitted now to deal with the cars, and take up the other points in the order which I have stated.

Mr. STEVENS. Very well; continue.

Mr. URION. Many thousand freight cars operated by the railroads of this country are built with money advanced by trust companies and financial institutions on what are called car trusts. These cars are owned by the financial institutions or trust companies, who furnish them to railroads to be operated; payments for their use are made monthly, quarterly, or at fixed times, the title at no time passing to the railroad company until full payment is made. These cars, to show their ownership not to be in the railroads operating them, are plainly marked on each car, generally by an iron plate, in these or similar words. "Guarantee Trust Company, Owners." There are many, many thousands of those cars operated on the railroads of this country to-day.

Where is the difference between trust companies and financial institutions owning these cars, and the private car company? If one is a common carrier engaged in interstate commerce, because he furnishes cars to railroads to operate, then so is the other. There is no difference. If you legislate the private-car companies to be common carriers how can you exempt the trust companies?

But neither the trust companies nor the financial institutions who own and furnish cars to the railroads, nor the private-car companies who own and rent cars to the railroads, nor the car-building companies who build cars and sell them to the railroads, are engaged in interstate commerce. As I said to you a few minutes ago they only furnish means—facilities if you please—in aid of transportation, and our Federal Supreme Court has drawn a wide distinction between interstate commerce and facilities or means in aid of transportation. I cite you the Hopkins case, 171 U. S., 578. That was the Kansas City Stock Yards case, and later I shall go into that quite fully, and quote from the opinion of the court. I cite you also to the case of Hooper *v.* California, 155 U. S., 648, and the case of People *v.* Knight, 192 U. S., p. 21, of which I have just read a portion to you.

It seems unnecessary for me to dwell any further on the car question.

Mr. MANN. What are the terms under which these guarantee companies lease the cars to the railroads?

Mr. URION. Perhaps you have examined those leases and know them. They provide that the title shall at no time pass from the trust company until the car is fully paid for, and they are in the nature of a chattel mortgage, and must be filed as a chattel mortgage is. We have sold some of our old cars, which were worn out and were no longer fit for the fruit and berry traffic, to some roads.

Mr. MANN. Can you not see a distinction between a car owned, practically, by a railroad company—held under a lease, practically owned, subject to a chattel mortgage, merely—and a car owned by a company which is actually in business, furnished, as it may be demanded from time to time?

Mr. URION. There is a distinction, a legal distinction, but I think there is no difference in connection with their use by the railroads operating them.

Passing now to the second subdivision, refrigeration, which is one of the branches of the private car company's business. Mr. Robbins has told you, and it has been stated to you by others who appeared before you, that only a portion of the fruits loaded in these cars require refrigeration. It is true that a large proportion of them do, and when it is required by the shipper, the private car companies perform this service. It has been stated to one of the committee, I do not know whether it was before this committee or before the Senate committee, that there was no means by which the shipper could find out whether or not he had to pay anything for refrigeration, or if he did have to pay, what it would be. Mr. Robbins has produced and filed with this committee one of the printed tariffs for refrigeration which the car company issue each year, which shows the tariff charges for refrigerating these commodities from the shipping points.

They are distributed freely among the shippers of the different localities. They are given to the railroad agents at the shipping points. The car lines keep in each one of these growing and shipping localities a general agent, and other agents also, to look after the interests of the business. Those agents are supplied with the tariffs, and they pass freely among all of the shippers of that district, who have these tariffs. They are either in their own possession or easy of access, and they know where they can be found, and they know that the refrigeration of these cars is not undertaken, as a general rule, unless with the knowledge and consent of the shipper, with full knowledge of the refrigeration charge.

There have been several suits brought in Chicago and in the West by some of the people who have appeared before you, commission men, seeking to recover from the railroads these refrigeration charges that the railroads put on the bottom of their waybill and collect and pass over to the car companies, claiming that no contracts were ever made between the shipper and the car company for this refrigeration, and that they should recover back what they had paid. One of those suits has been tried, and it was found that there was an implied contract. There have been four suits tried in the city of Chicago alone, where the commission men, acting on their own initiative, have refused to pay the refrigeration charge to the railroad.

They have been sued, and in each case a recovery has been had, on the ground that the shipper, when he loaded his car, expected the service of refrigeration, knowing through the tariffs, which were either in his hands or easy of access, and at the railroad stations or shipping points, what those tariffs were, and on the ground that the shipper entered into an implied contract to pay that rate when he received the service. I mention this in passing, to answer one of the questions that has been put to me in respect to whether or not there was a contract between the shipper and the car company covering refrigeration.

Mr. STEVENS. Then your point is that when the shipper receives the service of refrigeration it is an implied contract with your company?

Mr. URION. Yes, sir; because the fact is, Mr. Chairman and gentlemen of the committee, that every one of these men who are engaged in growing and shipping knows absolutely that the service of refrig-

eration is an independent one and one requiring an additional payment, and every one of them knows—I venture to say that none of them fail to know—what that charge is before the service is accepted.

Mr. TOWNSEND. Do you mean to say that you recovered—do you mean to say that you could recover this, for instance, if they did not pay it?

Mr. URION. The charge for refrigeration?

Mr. TOWNSEND. Yes.

Mr. URION. We did recover.

Mr. TOWNSEND. From the shipper?

Mr. URION. Yes; that is, we did in two cases recover from the shipper, but in the other the commission men themselves presumed to refuse to pay the charge without the knowledge of the shipper and owner of the freight.

Mr. TOWNSEND. Was not your carrier a party to the suit instead of you?

Mr. URION. In one of the cases he was.

Mr. TOWNSEND. What standing would you have in a court, if you had made a contract with the railroad company, and they, without any arrangement between the shipper and yourself, should put onto their bill a charge for icing? How do you have any standing in that case?

Mr. URION. The standing that we have is by intervening, to show that the service was rendered by the car line company, with the knowledge and consent of the shipper, and that there was an implied contract that he would pay for that refrigeration service. The railroads simply collect this refrigeration charge as a matter of accommodation, and it is put on the waybill as an additional charge.

Mr. MANN. Then your theory is that the railroad company acts as the agent of the shipper so far as your icing is concerned?

Mr. URION. In the collection of the charge?

Mr. MANN. Well, in ordering you to do the icing.

Mr. URION. The shippers themselves order the icing.

Mr. TOWNSEND. Did the railroads ever, of their own motion, institute a suit to collect this icing?

Mr. URION. For our account, yes, sir.

Mr. TOWNSEND. As a charge due to them, the railroads?

Mr. URION. No, sir; they did in two instances, because they had paid the charge over to us, and they instituted the suit on their own account.

Mr. TOWNSEND. In your contract with the railroad company have you such a provision as you have been speaking about?

Mr. URION. I will read to you, if you like, a copy of the contract which is entered into with the railroads. These contracts are practically all of the same kind.

(Reading:)

This agreement, made and entered into this 16th day of May, A. D. 1904, by and between Armour Car Lines, a corporation organized and existing under the laws of the State of New Jersey, hereinafter known as the "car line," party of the first part, and the Central of Georgia Railway Company, a corporation organized and existing under the laws of the State of Georgia, hereinafter known as the "railroad," party of the second part, witnesseth:

That for and in consideration of the sum of one ($1) dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the mutual covenants and agreements hereinafter set forth, to be kept and performed by each of the parties hereto, it is hereby agreed as follows:

1. The car line agrees to furnish the railroad at such junction points on the rail-

road's lines as the railroad may direct, properly constructed fruit cars, in good order and condition, lettered "fruit growers' express," "Kansas City fruit express," or "Continental fruit express," sufficient in number and furnished in such order as to carry with dispatch the fruits and vegetables tendered to the railroad by shippers at stations on the lines of railway owned, leased, or operated by it for shipment under refrigeration during the life of this contract, and the car line also agrees to keep said cars properly iced while in transit over the lines of the railroad and its connections to destination.

Not less than sixty-six and two-thirds (66⅔ per cent) per cent of the cars supplied hereunder shall be forty feet long, and thirty-three and one-third (33⅓ per cent) per cent not less than thirty-six (36) feet long.

2. The railroad agrees and obligates itself to use the car line's cars exclusively in the movement of fruits and vegetables under refrigeration from points on the lines of railway owned, leased or operated by it during the life of this contract, so long as the car line shall furnish sufficient equipment to protect said business. But if because of some unforeseen emergency resulting in car shortage, it becomes necessary at any time for the railroad to furnish cars which are by it obtainable from other sources to meet the emergency, then the car line agrees to refrigerate such cars without prejudice, same as it does its own cars, at same charge per car which it makes in the case of its own cars.

Car line agrees to pay the railroad whatever amount said cars obtained to meet such emergency may cost the railroad in excess of what would have been the cost to the railroad if the car line had furnished the necessary cars.

Mr. TOWNSEND. Please read that once more.

Mr. URION. It is to the effect that in case of a temporary shortage of cars the railroads can get other cars, and the car line is obligated to reimburse them for what they spend over and above what those cars would have cost if we had furnished them.

Mr. TOWNSEND. Over and above what it would have cost them if you had furnished the cars?

Mr. URION. Yes.

[Reading:]

3. The car line's charges to be made for superintending, loading, furnishing refrigeration and handling the business generally under its supervision in Fruit Growers Express, Kansas City Fruit Express, Continental Fruit Express, or other similar cars used for the same, shall not exceed the basis of rates per car shown in the car line's tariff No. 365, in effect June 1, 1903, hereto attached, and made a part hereof.

It was testified or stated by some of those who were here during the hearings that the railroads, looking after the shippers and growers interested, are bound not to increase the refrigeration charge during the term of the contract.

[Reading:]

It being understood and agreed that the car line's charges made from stations on the lines of railway owned, leased, or operated by the railroad shall in no case exceed the charges made by the car line for refrigerating the same traffic from stations similarly situated on the line of other railroads in the same territory. The car line's charges referred to shall be billed as advance charges on each carload, and shall be paid to the car line monthly by the accounting department of the railroad, it being understood that in event property is refused and sold en route or at destination through no fault on the part of the railroad companies interested or the car line the car line will join the railroad companies interested in prorating on a revenue basis any deficit that may exist between the amount of transportation charges and the proceeds of sale.

4. The railroad shall pay the car line three-quarters (¾) of one cent per mile run on its owned, leased, or operated lines of railway by each car of the car line used in said refrigeration service, both loaded and empty. The railroad further agrees to deliver promptly any car left over at the close of the season to such connections as are indicated by the car line, provided the car line shall not ask the railroad to haul its cars empty farther than the junction points at which the cars were received.

5. The railroad further agrees to furnish free transportation over its owned, leased, or operated lines of railway for use of officers and agents of the car line actually engaged in supervising shipments on its said lines of railway.

6. The car line agrees to be responsible to shippers or consignees for proper and adequate refrigeration of the cars furnished hereunder, and to hold the railroad harmless from loss and damage to contents of such cars arising from improper or inadequate refrigeration.

7. In event of general labor troubles, or other conditions beyond the control of the car line, which make it impossible to obtain movement of cars in sufficient numbers, or with sufficient dispatch to furnish at junction points cars necessary to protect the traffic hereinbefore described, then and in that case the railroad will take cognizance of the disability of the car line in construing the terms of this agreement.

8. The car line agrees that the use of its cars shall be open on equal terms to all shippers on the line of the railroad, and that the distribution and routing of the cars shall be made by the railroad.

9. This contract shall continue in force for the period of three (3) years from date.

In witness whereof, the parties hereto have caused this contract to be executed in duplicate by their proper officers the day and year first above written.

ARMOUR CAR LINES,
By GEO. B. ROBBINS, *Vice-Prest.*
CENTRAL OF GEORGIA RAILWAY COMPANY,
By W. A. WINBURN, *V. P. and T. M.*

CHICAGO, ILL.

Mr. TOWNSEND. Now, do I understand you to say that under that contract the shipper would have any right to come back on the car company for damages?

Mr. URION. They do have the right, and that right is exercised right along. I do not know of any cases where they go to the railroad. If they do, they are sent to us. They could go to the railroad. I received notice of a claim to-day from the Chicago office, a claim that has just been made on some stuff shipped out of a Georgia point, where the refrigeration is alleged to have been poor.

Mr. TOWNSEND. Have you ever had any suits on it, do you say?

Mr. URION. Yes, sir; we have.

Mr. TOWNSEND. What suits have you ever had where the shipper, under that contract, under no special contract that you have had with the shipper, but under that contract that you had with the railroad and the carrier, and let those cars out to the shipper, where the shipper could hold you for the damage?

Mr. URION. The case of Doctor Ross, of Macon, Ga., who sued several years ago to recover. Of course we did not put in a defense, because the liability was ours.

Mr. TOWNSEND. I can see readily where, under that contract, you would be liable to the railroad company.

Mr. URION. He took that on the ground of an undisclosed principal. But we absolutely never have contested a suit brought against us by the shipper, because we recognized him as our obligation.

Mr. TOWNSEND. I can readily understand why you might voluntarily recognize that as your obligation, but the question of enforcing that contract, as against you, where you have not been known as a party—what did you say about an undisclosed principal?

Mr. URION. I say the railroad might be liable as an undisclosed principal, if the shippers do not know it; but they do know it, and they come to us.

Mr. TOWNSEND. They are the disclosed principal and you are the undisclosed principal to the shipper.

Mr. URION. Yes; I say they can sue the railroads. If they should sue the railroads, however, we are liable.

Mr. MANN. Under the decisions of the courts in our State, repeatedly affirmed, there would be no question about the right of a third

person to sue on a contract between two persons where a promise was made by one person to another for the benefit of the third person.

Mr. URION. Certainly; that is the common law.

Mr. ESCH. You said you had four cases in Chicago of that action.

Mr. URION. That is where we sued to recover the refrigeration charges.

Mr. ESCH. Yes. Did those cases terminate in the lower court?

Mr. URION. No, sir; not all of them.

Mr. ESCH. Have any of them been appealed?

Mr. URION. The appeal in one of them has been noted, but not perfected.

Refrigeration is a local service. The service is performed at stated points where the cars are stopped, detached from the train, and the contents refrigerated, just as in the early days before the improved stock cars came into existence the cars were stopped, the cattle unloaded for rest, feed, and water. The service of icing contents of cars may aid transportation, but it is not a part thereof. It may be incidental to commerce, but it is not commerce itself. It has nothing to do with the transportation or with the use of the car. It is, therefore, not the subject of legislation here, for the authorities which I have heretofore quoted you hold that if the business is not interstate commerce Congress has no power to regulate it.

The process of icing, which constitutes the refrigeration, and for which a charge to the shipper is made, involves:

(1) The sale of the ice itself, which is either natural and taken from its place of storage, or artificial and supplied from the plant where produced; and

(2) The furnishing of labor necessary to transfer the ice to the receptacle therefor in the stationary car.

When these things have been performed the transaction is complete and the charge has been fully earned. Wherein is this transportation, or wherein is it interstate commerce? Certainly neither the ice itself nor the structure where stored or produced is an instrumentality of interstate commerce, nor can the persons who cut, store, or produce such ice, or who own structure and appliances devoted to the transaction, be said to be engaged in interstate commerce.

In this connection I want to call your attention to a leading case on the subject of what is in aid of and incidental to commerce, and yet is a purely local service. In the case of People *v.* Knight, 171 N. Y., 354, affirmed by the Supreme Court of the United States on January 4, 1904, just a year ago, and reported in 192 U. S., page 21. In this case the opinion of Mr. Justice Brewer disposed of a warmly contested litigation as to whether charges made by a railroad company engaged in interstate commerce, for the use of a cab service instituted and maintained by it for passengers going or leaving its station in the city of New York, holding they were for a purely local service.

It is self-evident that however broad and unlimited the language of a statute may be it must be construed so as to apply only to the matters and transactions within the domain of the law-making power, i. e., an act of Congress concerning commerce can be extended only to that which is strictly interstate commerce in a legal sense. That doctrine is laid down in the case of Osborne *v.* Florida (164 U. S., 650, etc.), U. S. *v.* E. C. Knight Co. (60 3d Rep., 306, affirmed 156 U. S., 1, 10,

and 16), Nathan *v.* Louisiana (8 How., 73), U. S. *v.* Boyer (85 3d Rep., 425).

How can it be contended that the person who owns the structure and the ice, and who employs the labor in removing the ice from storehouses or from factories at local points in the different States into the cars which are stopped and taken from the train for that purpose, has brought himself within the purview of the Federal power over interstate commerce?

Refrigeration may or may not be essential to the proper carriage of fruit. We care not, for essentiality is not the test as to whether the service is part of interstate commerce. Our Supreme Court so held in the Knight case.

For the reasons authoritatively declared in Hopkins *v.* U. S., 171 U. S. 578, and other authorities which I have or will cite, it must conclusively follow that the matter of charges for icing and refrigeration is not one in respect to which Congress has constitutional authority to legislate. At best such services are purely accessoral in their character. In a legal sense they are separate and distinct from the contract of transportation and form no part of the commerce among the States which has been submitted to the jurisdiction of Congress.

The broad contention I now make is that a local service rendered in aid of and incidental to an interstate shipment, even if necessary and essential thereto, is not interstate commerce. While this general principle has been repeatedly recognized by our courts, it recently took distinct form and was the subject of elaborate discussion and review in the case of Hopkins *v.* U. S. (171 U. S., 578). The precise question involved was the legality of an association of live stock commission men at the Kansas City stock yards which undertake to regulate, among other things, prices for their services in caring for and looking after the shipments of owners. The live-stock shipments dealt with were largely the subject of interstate commerce. The Government proceeded against the members of the association under the anti-trust act, upon the ground that their arrangement was in restraint in commerce between the States. This directly presented the question whether the business of the association and that of its members was interstate commerce and subject to the Federal jurisdiction. The court in no uncertain terms said that it was not, and that the services rendered were local in their nature, in aid of, and incidental to interstate commerce, but not a part thereof. Among other things, Mr. Justice Peckham said in his opinion:

"On the contrary we regard the services as collateral to such commerce and in the nature of a local aid or facility provided for the cattle owners toward the accomplishment of his purpose to sell them. * * * Granting that the cattle themselves because coming from another State are articles of interstate commerce, yet it does not therefore follow that before their sale all persons performing services in any way connected with them are themselves engaged in that commerce, or that their agreements among each other relative to the compensation to be charged for their services are void as agreements made in restraint of interstate trade. * * * Charges for the transportation of cattle between States are charges for doing something which itself constitutes interstate or commerce, while the charges of commission merchants based upon services performed for the owner * * * are not directly connected with, as forming part of, interstate commerce, although the cattle may have come from another State. Charges for services of this nature do not immediately touch or act upon, nor do they directly affect the subject of the transportation. Indirectly, and as an incident, they enhance the cost to the owner of the cattle in finding a market or they may add to the price paid by the purchaser, but they are not charges which are laid directly on the article in the course of transportation, and which are charges upon commerce itself.

They are charges for the facilities given or provided the owner in the course of the movement from the home site of the article to the place and point where it is sold (which is exactly what the icing of the contents of the cars of fruit). To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act so far beyond the meaning of the language used.

To hold such agreements void would, in our judgment, improperly extend the act to matters which are not of an interstate commercial nature. It is not difficult to imagine agreements of the character above indicated. For example, cattle when transported long distances by rail, require rest, food, and water. To give them these accommodations it is necessary to take them from the car and put them in pens or other places for their safe reception.

They say that in this decision. But, of course, the more modern cattle cars have come into service now, and the cattle consume the feed

and water en route. The cars are stocked, and hay, and corn, and water are put in the cars at local points, but that feed and water is consumed en route. So it is with the icing, the refrigeration. The ice is put in at local points, but is consumed—eaten up—en route.

I quote further from Mr. Justice Peckham.

Reading:

> Would an agreement among the landowners along the line not to lease their lands for less than a certain sum be a contract within the statute as being in restraint of interstate trade or commerce? Would it be a contract, even if the lands, or some of them, were necessary for use in furnishing the cattle with suitable accommodations? Would an agreement between the dealers in corn at some station along the line of the road not to sell it below a certain price be covered by the act, because the cattle must have corn for food? Or would an agreement among the men not to perform the service of watering the cattle for less than a certain sum, come within the restriction of the statute? Suppose the railroad company which transports the cattle itself furnishes the facility, and that its charges for transportation are enhanced because of an agreement along the line not to lease their lands to the company for such purposes for less than a named sum; could it be successfully contended that the agreement of the landowners among themselves would be in violation of the act as being in restraint of interstate trade or commerce?
>
> Would an agreement between builders of cattle cars not to build them under a certain price be void because the effect might be to increase the price of transportation of cattle between States? Would an agreement between dealers in horse blankets to sell them for not less than a certain price be open to the charge of a violation of the act, because horse blankets are necessary to put on horses to be sent long journeys by rail, and by reason of the agreement the expense of sending the horses from one State to another for a market might be thereby enhanced? Would an agreement among cattle drivers not to drive their cattle after their arrival at the railroad depot at their place of destination to the cattle yards where sold, for less than a minimum sum come within the statute? Would an agreement among themselves by locomotive engineers, firemen, or trainmen engaged in the service of an interstate railroad not to work for less than a certain named compensation be illegal because the cost of transporting interstate freight would be thereby enhanced? Agreements similar to these might be indefinitely suggested. In our opinion all these queries should be answered in the negative.

I have quoted largely from Mr. Justice Peckham's opinion, because of its applicability to the service of icing or refrigeration of the contents of the cars rented to and operated by the railroads, which service is one of the twofold occupations of the private car company. Unquestionably the case decides that a local service in aid of and incidental to interstate commerce, even if essential thereto, is not such commerce. That case shows many instances where necessary service in aid of transportation is local in its nature. There are many other cases decided by our Federal courts in perfect harmony with this decision, and I hope I may be pardoned for referring to a few of them later on because of their application.

You are asked to legislate the private car companies out of business by requiring the railroads to own their own cars and to furnish this local service in aid of and incidental to interstate commerce, when the Federal Supreme Court has said that even though it is essential to transportation and commerce it is not such commerce; and if it is not, how can Congress, under its constitutional powers, by legislation, require the railroads to perform this service, or how can Congress legislate that the private car companies shall not be permitted to continue to perform this service?

Mr. STEVENS. Do you mean to say we can not compel a railroad to perform all the instrumentalities of service, and furnish all the facilities of carriage?

Mr. URION. Instrumentality, yes; but I contend that refrigeration is not an instrumentality. That is one of the subjects I expect to reach later on.

Mr. STEVENS. I beg your pardon. I did not mean to disturb your argument.

Mr. URION. It is evident I can not finish this evening.

Mr. MANN. Suppose you answer a few questions. If Congress has the power to compel a railroad company to unload cattle in order that they may be fed and watered, as a matter of interstate commerce, and as a part of the duty of the common carrier, has it not also the right to require the railroad company to furnish the pen in which the cattle shall be unloaded?

Mr. URION. They may furnish the pen. They furnish the car in which the fruit is to be carried.

Mr. MANN. This has nothing to do with the carriage. The pen has only to do with the feeding and the rest.

Mr. URION. Yes, sir.

Mr. MANN. If we have the power to compel the railroad companies to take them out for rest and feeding, would not we have the power to compel the railroad companies to feed them in the cars?

Mr. URION. For an additional charge?

Mr. MANN. For such charge as they should make for carrying cattle at certain rates.

Mr. URION. I believe that was discussed in this case—the Hopkins case.

Mr. MANN. In your case you do not simply assume to put ice in the car and let the car go on through to its destination, but you assume to put the ice in the car and to maintain the car iced to the end of its journey.

Mr. URION. Yes, sir; but at local points in different States.

Mr. MANN. I suppose you supervise it every moment, do you not?

Mr. URION. No, sir.

Mr. MANN. If you are responsible for damages, do you not supervise it all along the line?

Mr. URION. We are responsible for damages if the refrigeration is not properly performed at the fixed local points.

Mr. MANN. If the car is not kept properly refrigerated?

Mr. URION. Yes, sir.

Mr. MANN. Your employees keep up a constant supervision?

Mr. URION. No; but I think that I will reach that further on, as I discuss the question of whether the railroads can be compelled to act as insurers as to defects in the commodity itself.

Mr. MANN. Perhaps we can not compel them. Undoubtedly, as to live stock, we can compel them to perform these duties, for we have had a law on the statute books for many years which they are very much opposed to, but which remains there.

Mr. URION. Then, can Congress pass a law requiring railroads to be responsible for the natural vices of the animals themselves?

Mr. STEVENS. Nobody pretends that Congress can do any such thing.

Mr. URION. That is on the same line.

Mr. MANN. We do not think so. But if the railroads should be held responsible for the inherent vices of an animal, and if it made a tariff based on that, and that grew up to be a custom of that road, should we not have the right to regulate it?

Ir. URION. If the railroads want to undertake to perform the act er their carrier responsibility they would.
Ir. MANN. The railroads in many places do so undertake.
Ir. URION. The common carrier is bound to perform that which it ertakes, fully, so long as it undertakes to do it. There is a Choc- case—I do not remember the name, but it is somebody against the ctaw Gulf Railroad—which I think answers your question.
Ir. MANN. Take the case that we have before us. Suppose the tral of Georgia Railroad undertook to ice cars from Georgia to ton, and to provide that service, and did provide the service and it in their original published tariffs, do you think that we would e any control over it?
Ir. URION. If they undertook to do it?
Ir. MANN. Yes.
Ir. URION. Yes; I think you would.
Ir. MANN. But do they not undertake to do it now by making an usive contract with you by which you agree to do it?
Ir. URION. That is the shippers?
Ir. MANN. Your contract is with the railroad company and not ı its shippers.
Ir. URION. They designate in the contract that we shall perform service when it is required.
Ir. MANN. You make an exclusive contract with the railroad com- y, putting yourselves in the place of the railroad company, by which agree to perform that service.
Ir. URION. When the shippers require it; that is true.
Ir. MANN. That is the only time they could do it—when the shippers ıire it.
Ir. URION. But they make no charge for that.
Ir. MANN. I am only making suggestions, you understand.
Ir. URION. I understand.
Ir. STEVENS. But that is their business, is it not?
Ir. URION. I was going to say this, in respect to compelling them ıerform the service; that is performing something that is not in f interstate commerce, and they may contract with us, and assum- that the contract provides we shall perform it, it is a separate and itional services for which the railroad might make a separate and itional charge, if they performed it.
Ir. MANN. I never thought that New York Cab case was either a -presented or a well-considered case; and it is constantly held that re railroads, as they occasionally do, undertake to deliver the freight; vhere, in fact, they undertake not only to deliver it, but universally practically to collect for it, that that is a part of the duty of the ier.
Ir. URION. Under the law, that which a common carrier undertakes o, he must do so long as he undertakes to do it —no more.
Ir. MANN. Your contract is not made with the shipper directly, ept as an implied contract. You make a contract with the railroad pany by which you agree to perform all this service—not local but ıugh service—from one State to another.
Ir. URION. If Congress can legislate to require the railroads to fur- this service, assuming for the moment that they may do so and ı done so through this contract with the car lines, then they can

compel the railroads to furnish food to the travelers crossing the continent, because food is necessary to sustain life.

Mr. STEVENS. I think that is right.

Mr. MANN. Yes, sir. Suppose that there was a desert from Chicago to San Francisco, and a railroad was built across the continent, and that railroad company undertook to carry passengers across the continent and made no provision anywhere for their water or their food, do you not think that Congress could regulate that matter and require the railroad company to do it?

Mr. URION. Has not the railroad company here made provision whereby the shippers of this freight may get these things, just as the railroads provide for the travelers across the continent, that they shall stop their trains and hold them long enough for the travelers to go into the stations and buy their own food?

Mr. MANN. But suppose that Congress would not wish to assume that authority in respect to passengers, yet, cases might occur where Congress would wish to, and then it would be possible?

Mr. URION. I doubt it. I have some examples as authorities on that subject which I will bring up later.

Mr. STEVENS. Have you finished the subject that you have been on?

Mr. URION. Yes, sir.

Mr. STEVENS. Then this would be a good place to stop?

Mr. URION. Yes, sir.

Mr. STEVENS. It strikes me, and I shall want to hear you on that point, that this refrigeration, and the supervision of it, and this loading which you do is an inseparable part of the contract of the carriage of these peaches—this fruit—and that the condition is such that it can not be divorced from it in anyway, and that nothing can change that condition.

Mr. URION. I will treat on that subject a little later on in my argument.

Mr. STEVENS. All right; that is what I want to hear.

Thereupon, at 3.50 o'clock, p. m., the committee adjourned until to-morrow, February 22, 1905, at 2 o'clock, p. m.

WASHINGTON, D. C.,
Wednesday, February 22, 1905.

The subcommittee met at 2 o'clock p. m., Hon. Fred. C. Stevens in the chair.

ARGUMENT OF MR. A. R. URION—Continued.

Mr. URION. I will now proceed to consider the question whether Congress can impose upon the railroads the duty of refrigeration. If it be shown that it is a purely local service, incident to but not a part of transportation or interstate commerce, it is plain that Congress may not impose that duty on the carrier. Mr. Justice Peckham said further in the Hopkins case:

> For example, cattle, when transported long distances by rail, require rest, food, and water. To give them these accommodations it is necessary to take them from the car and put them in pens or other places for their safe reception. Such a service, whether rendered by the carrier or another, is not interstate commerce.

I wish to read section 4387 of the Revised Statutes of the United States respecting the unloading of animals being transported through different States to places of destination in order that they may be fed and watered. The preceding section, 4386, requires the railroads at certain intervals to stop their trains and unload the cattle. This section says:

> Animals so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company or owners or masters of boats or vessels transporting the same, at the expense of the owner or person in custody thereof; and such company, owners, or masters shall in such case have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals.

The legislative suggestion is in recognition of the fact that cattle being transported a long distance must be fed and watered in order to preserve them, but there is no suggestion as to this feeding and watering of these cattle at intervals along the road, which is just like the icing of fruit for its preservation, that the railroad shall perform that service. It says that the owner must do it himself, upon the assumption, no doubt, that it was not regarded as a facility of commerce nor commerce itself, but merely an aid, an incident thereto.

Mr. STEVENS. Then, under your argument, that act is void?

Mr. URION. They have no jurisdiction to pass such an act. This act does not require them to feed and water cattle.

Mr. STEVENS. And if it be not commerce between the States Congress has no jurisdiction over it?

Mr. URION. They must recognize that. They do not require them to feed and water these animals at all. The owner has to do that. The act, of course, applies to commerce between the States. That is in the preceding section. I have read simply the section relating to feeding and watering.

Mr. STEVENS. If Congress has the power to compel one man or one class of men to feed and water stock, it has power to compel another man or another class of men to feed and water stock, has it not?

Mr. URION. Yes; but it has not the power to require the common carrier to do it.

Mr. STEVENS. Why not?

Mr. URION. Unless it be for an extra charge incidental to and in aid of it. In this case the railroad performed the service on the failure of the owner to do it, and then it had a lien on the cattle for the charge.

Mr. STEVENS. The point is the power to compel somebody to do it, and that somebody may or may not be the railroad.

Mr. URION. That, of course, was on humane grounds, and within the police power of the State.

Now, applying that reasoning to the refrigeration of the contents of a car of fruit. The car is required to be stopped, detached from the train at a local point, where it goes through the process of icing, which is first the sale of the ice itself; second, the furnishing of the labor necessary to transfer the ice to the proper receptacle in the stationary car. Mr. Justice Peckham said that that service, whether rendered by the carrier or another is not interstate commerce.

It was very properly said in the case of the State Tax on Railway Gross Receipts (15 Wall., 293), that "it is not everything that affects commerce that amounts to a regulation of it within the meaning of the

Constitution." The warehouses of these plaintiffs in error are situated, and their business carried on, exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in State as well as those engaged in interstate commerce, but they are no more necessarily a part of commerce itself than the dray or cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally, they may become connected with interstate commerce, but not necesssarily so.

Applying this ruling, a learned State court directly held that mere services rendered in and about property, though it be at the time the subject of interstate commerce, were not a part of such commerce. (Stone *v.* Yazoo, etc., R. Co., Miss., 607, 639, 640.)

Products in the course of interstate shipment are frequently insured. This protects the shipment in course of transit. It aids commerce, but it is not a part thereof. Such insurance may be burdensome to the owner, and the charges exacted therefor so unreasonable as to increase the cost of the article, yet the insurance is no part of interstate commerce. It is a mere incident thereto. That is laid down in Hooper *v.* California, 155 U. S., 648, and the cases there cited.

In Philadelphia, etc., Ins. Co. *v.* New York (119 U. S., 110, 118). Mr. Justice Blatchford said of the Paul case:

> As to the power of Congress to regulate commerce among the several States, the court said that while the power conferred included commerce carried on by corporations as well as that carried on by individuals, using a policy of insurance is not a transaction of commerce.

Upon an interstate shipment the buyer is interested in the question of the cost of shipment until the goods reach his storeroom. Drayage and cartage are necessary to bring the goods from the station to the store, or from one carrier to another en route. But in such case the service is local. In Munn *v.* Illinois (94 U. S., 113), this is so recognized, for in arguing that the elevator services were local and not a part of interstate movement, Mr. Chief Justice Waite said:

> But they are no more necessarily a part of commerce itself than the dray or cart by which, but for them, grain would be transferred from one railway station to another.

That is speaking of elevators that cleaned the grain that was in transit and interstate movement.

States and cities exact charges, regulated and fixed by them, for the use of wharves, docks, canals, artificial locks and the like, whether the agencies used be owned by the public or private parties. These charges, and the right of the State to regulate the same, have always been sustained against the contention that the agencies were used as a part of interstate commerce. The ground upon which they have been sustained is, that the charge was for a local service in aid of commerce, and, though essential thereto, was not part of commerce itself.

An illustration may be found in the case of providing food for passengers in interstate transit. A common method of so doing is that adopted by the Santa Fe system, upon the lines of which, extending from the Great Lakes to the Gulf and to the Pacific Ocean, are established the well-known Harvey eating houses and lunch rooms. Unquestionably it is the duty of the carrier to give to the passenger an opportunity to eat, but the furnishing of that food by another at a stationary stand along the railroad is not converted into interstate commerce

because he who partakes thereof is upon an interstate journey or is being carried by an interstate carrier.

Hence, Congress can not say what charge shall be made for a meal or for the different articles at the lunch room. No one yet has been bold enough to suggest that such authority could constitutionally be conferred. Whenever the suggestion or assumption shall have been made, the plain answer thereto will be made that it is not interstate commerce. It has been so decided as to furnishing food, water, and rest to animals in the Hopkins case (171 U. S., 578) and the Cutting case (82 Fed., 529).

The illustration is pertinent to the question under consideration, for the furnishing of food to sustain the health and life of passengers; so the furnishing of food, water, and rest to live stock so as to preserve it in such condition that it may be slaughtered for human food, and that, too, while it is in transit. If, then, the services in either of the supposed cases are local in their nature and only an incidental aid to the interstate carriage, as distinguished from being a part thereof, how can the similar service rendered to preserve the existence of fruits as human food stand or rest upon different grounds?

Mr. STEVENS. Then under your doctrine all that Congress has power to compel the carrier to do is to provide the cars?

Mr. URION. To provide a sufficient car. Later on I shall expect to show that a common carrier ought not to be charged with the duty of a cold-storage business; that he ought not to be called upon to be an insurer against inherent defect in the commodity itself. I will reach that presently.

So, if as decided in Hooper *v.* California (155 U. S.), Phila., etc., nsurance Co. *v.* New York (119 U. S., 110), New York Life Insurance Co. *v.* Cravens (Sup. Ct. Rep., 962), the insurance on an interstate shipment of fruit, made to preserve and guarantee its existence for the owner, be simply a local service, how can the furnishing of ice to preserve the existence, thus rendering insurance unnecessary, be anything else?

If it were necessary to stop, sort and grade fruit, as it is with grain, so as to keep it from being destroyed by insects, and so as to have it in fit and proper condition for the market, manifestly this would not be other than a local service, for the courts so hold as to the similar elevator service. (Munn *v.* Ill., 94 U. S., 113; Stone *v.* Yazoo, etc., R. Co., 62 Miss., 607, 639, 640; Budd *v.* New York, 143 U. S., 517; Brass *v.* N. Dak., 153 U. S., 191.)

What difference in principle is there between such method of preservation and the use of ice at local stations to preserve the fruit's existence? In both cases the services are to preserve in a fit condition for market the product in the course of interstate shipment. The use of the dray or the cart to carry the fruit from one carrier to another, or from the destination of the carrier to the store or salesroom of the commission merchant or buyer, is necessary and essential to enable him to obtain possession of the article which has, by local icing, been preserved for his use. Such cartage and drayage is not a part of commerce itself.

If Congress could exercise dominion over the service of icing and refrigeration it could as well exercise dominion over the commission merchant who charges drayage for hauling the fruit from the freight yard of the delivering carrier to his store.

Wherein is such service more of a local nature in aid of commerce than the icing of the article so as to preserve it for such cartage?

When fruits are shipped by vessel improved facilities are found in wharves and docks, so that the shipment may be there conveniently preserved and handled until actually loaded upon the vessel. The wharfage and dockage service is local and in aid of but not a part of commerce. (Hopkins case cited; Packet Co. *v.* Keokuk, 95 U. S., 80–85; Sands *v.* Manistee Imp. Co., 1, 2, 3 U. S., 288, 295.)

Manifestly, if, as part of the accommodation, the wharfage or dock company, or the municipality operating the same, iced the fruits to be shipped, the act of icing would not convert the local service or aid into an act of interstate commerce.

Mr. STEVENS. But a vessel would have to do that work.

Mr. URION. To ice it?

Mr. STEVENS. Yes.

Mr. URION. No, sir; I contend not. And the differences are those which I will touch later in connection with the inherent defects of the commodity itself. (Lindsay and Phillip Co. *v.* Mullin, 176 U. S., 126, 146, 154.)

Like principles should and undoubtedly do apply to warehouses.

At stations along the lines of railways newsboys ply their vocation and furnish interstate passengers with reading material, thereby facilitating and aiding such travel. Is this a local service, and has Congress power to fix the charges to be paid for periodicals or to say what prices shall be charged for daily papers? The telegraph companies send messengers to meet trains so as to deliver and receive from interstate passengers messages for telegraphic transmission. This aids and facilitates interstate travel, yet has Congress the right to fix and determine the price that shall be paid for the messenger service if, instead of doing the work gratuitously, the telegraph companies should decide to charge therefor?

It is true that the icing question continues its operative effect after the transportation has been resumed. This is an immaterial consideration. There are cars in which cattle can be fed and watered without being unloaded, and in which the food and water can be consumed en route, part, indeed, in one State and the remainder in another, but can Congress regulate the price which a farmer at a station along the road may charge for the hay and water put into the car at the local point to be consumed en route?

Again, blankets and other coverings are often put over horses while being transported by rail, and resulting comfort and protection attend the animals from one State to another. But it can not be said that Congress may fix the prices to be charged for this merchandise.

Coal is absolutely essential to the propulsion of locomotives. It is loaded locally at local points en route, just exactly as ice is put into the cars containing fruit to refrigerate them, but the coal is consumed in transit. So is the ice that refrigerates the fruit. Is the local fuel merchant who sells to the railroads the coal burned in these locomotives, and which is loaded at local points, engaged in interstate commerce? Can this body declare him to be a common carrier, or fix the prices he may charge for his coal? Or order him to desist asking a given price? Or accomplish the same result indirectly by enjoining the railroad from paying him a given rate per ton?

We have taken these illustrations, as they are services rendered for goods supplied while the train is stopped, just as the refrigerating service is rendered while the train is not in motion. We might, however, well apply them to the dining-car service and the service of the newsboys on the moving trains, for, as said in relation to feeding and resting live stocks where a State line ran through the stock yards, so that at the time of the service the animals were passing from State to State, the character of the service determines the question and not the accidental fact that the service may be rendered while passing from one State to another.

A decision by Congress that it may legislate authority to regulate refrigeration means that it must also legislate authority to regulate feeding, watering, and resting live stock, insurance and wharfage and dockage fees, drayage and cartage charges, the prices to be fixed for food at dining stations or lunch stands or upon dining cars, periodicals, cigars, and, indeed, every service rendered to a train beyond the powers granted to Congress by the Constitution as to satisfy even the wildest dreams of the most imaginative legislator. Indeed, in such an event what would there be left which could be said to be a local service incident to interstate shipments?

Mr. STEVENS. That is about the size of what some of us contend can be done.

Mr. URION. I am coming now right down to fruits, and the inherent defects in the commodity itself, and the natural vices of animals being transported.

Mr. STEVENS. It strikes me if we have not any right to legislate as to the care of passengers and their proper food, and as to compelling railroads to attend to those things if necessary—of course for a proper compensation—we had better quit the regulation of interstate commerce.

Mr. URION. Well, I do not think Congress can regulate and require the railroads to furnish food to passengers en route any more than they can compel the railroads to furnish insurance and insure against the act of God on the commodities they are carrying. Whatever damages might result to the fruit loaded into one of the cars furnished by the railroad company to the shipper, if the car is a proper and suitable one for the purpose, he can not be charged with damages resulting from the ordinary nature and inherent decay of the fruits in that car in the course of shipment.

Thus, in Hutchison on Carriers (2d ed. by Mechem, sec. 216a), it is said:

> So, obviously, the carrier, if not himself at fault, can not be held liable for losses which have been caused by the inherent nature, vices, defect, or infirmity of the goods themselves, as in the case of the decay, waste, or deterioration of perishable fruits, the evaporation of liquids, the natural death of an animal, the vicious or uncontrollable nature of live stock, and the like. These cases are frequently classed under the head of "losses by the act of God," and they are clearly within the same principle, though they are treated separately.

The Supreme Court has sustained this rule, for in Clark *v.* Barnwell (12 How., 272, 282) Mr. Justice Nelson said:

> For, it has been held, if the damage has proceeded from an intrinsic principle of decay, naturally inherent in the commodity itself, whether active in every situation, or only in the confinement and closeness of the ship, the merchant must bear the loss as well as pay the freight, as the master and owners are in no fault, nor does their contract contain any insurance or warranty against such an event.

In The Alesia (35 Fed. Rep., 531) it was said:

In my opinion, in a case like this, where two out of three holds of the steamer contain general cargo and the other green fruit, the holds being separate and distinct, and constructed of iron, it is too much to require the steamer to suspend the unloading and loading of holds wherein was no fruit in order to preserve fruit in the remaining hold from danger of injury by frost. The risk of the fruit in No. 3 hold being frozen while the other holds were open for the purpose of discharging cargo from these holds, in my opinion, should be held to be the risk of the shipper, and not of the ship—the bill of lading having exempted the ship from responsibility arising from the act of God.

The question was more recently discussed in the case of The Prussia, and I will quote the language of the court very fully there, because it touches upon fruits and meats.

By what rule of law is the case governed? A common carrier warrants that he will deliver safely at their destination all goods whose carriage he undertakes, loss or injury from inevitable accident, or irresistible force, and lawfully exempted cases excepted. But this warrant has never been thought to cover injury to goods from every cause, but rather to insure against any and all injuries, acts, and conditions extrinsic to the goods themselves. Against any or all injury resulting from the quality or constituent element of the goods it does not insure. For every outward act or agency, save those excepted by law or contract, it is absolutely responsible; but for deterioration of quality, arising from the nature of the thing, it is not liable. If the damage proceeds "from an intrinsic principle of decay naturally inherent in the commodity itself, whether active in every situation or only in the confinement and closeness of the ship, the merchant must bear the loss as well as pay the freight."

Will Congress undertake to make a railroad common carrier an insurer against the natural, inherent decay of a commodity itself, or, as more aptly put in the case of Clark *v.* Barnwell last cited, losses by the act of God?

So, in the case of animals, will Congress undertake to make the railroads insurers against the progress of disease, or for injuries arising from their own vice or timidity; or, in the case of grain, make the railroad insurer against heating or weeviling of that grain in transit; will Congress make the railroad an insurer against the fermentation, acidity, or effervesence in fluids when such is the result of the ordinary processes going on in the things themselves without the aid of causes introduced by the carrier?

If Congress shall, by legislation, require the railroads to furnish refrigeration and thereby insure the fruit against decay, natural and inherent in the fruit itself, then it makes the railroads insurers against all of the things I have mentioned and against losses by the act of God.

It has well been said by one of the modern writers that a carrier can not be required to create an artificial climate adapted to the preservation of goods or to warrant that the heat or cold should be unvarying and efficient. Such an obligation upon a common carrier never existed, and there is no judicial suggestion of its propriety, for the lawmakers will not assume that a carrier undertakes to add the business of cold storage to his regular occupation.

Mr. MANN. What are you reading from?

Mr. URION. I am reading now from the case of "The Prussia," in Eighty-eighth Federal Reporter.

Mr. MANN. Decided by what court?

Mr. URION. Decided in the United States circuit court, by Mr. Justice Thomas.

Mr. MANN. What was the date of it?

Mr. URION. I do not know. I have not the decision before me. I am quoting from a former brief of mine.

Dressed beef has a tendency to decay. Will Congress undertake to impose upon the railroads the duty of furnishing refrigeration to care for and preserve dressed beef while being transported by it from point to point?

Nowhere has there been a suggestion of any legislative attempt to make it the primary duty of a common carrier to undertake to insure against loss in the way of defects inherent in the commodity itself or the act of God. The most that has ever been attempted by way of legislation has been to make it the primary duty of a common carrier to introduce or permit the introduction of no agency which will excite or develop such a tendency. If, therefore, the subject is to be dealt with by Congress in a manner within its powers under the Constitution, there is no doubt that refrigeration can not be made a part of a carrier's duty. Refrigeration is a mere collateral undertaking. Our Supreme Court has said it may be incidental to commerce, but it is not commerce. Refrigeration, even if it be essential to the shipment of perishable fruits, makes no difference, for essentiality of a service is not the test in determining whether such service is transportation or is commerce.

An interesting case on the point which was suggested yesterday by Mr. Stevens, that the refrigeration was performed at various points en route, is that of Kelly *v.* Rhodes (188 U. S., 1). This was where a band of 10,000 sheep were being driven across the State of Wyoming in a direct route, passing from Utah to Nebraska, going 9 miles a day, and stopping at intervals and being allowed to graze.

Would a statute of Wyoming fixing the amount to be paid for pasturage on lands belonging in that State or to private persons by the owners of such a flock of sheep as was there considered to be constitutional as a regulation of interstate commerce? Or would such a charge be regarded as merely one for a local service, notwithstanding the fact that the sheep in question were at the time subject, in other respects, to the regulations affecting interstate commerce?

Mr. MANN. Might I ask you a question there?

Mr. URION. Yes, sir.

Mr. MANN. Sugar, of course, will melt with water falling on it. Do you think a railroad company is bound to furnish covers to prevent rain from falling on sugar?

Mr. URION. The railroad company is required to furnish the necessary and proper equipment for carrying the commodity which it undertakes to carry, unless there is an inherent defect in the commodity itself to which he adds nothing which excites or adds to it.

Mr. MANN. There is an inherent defect in sugar to which he adds nothing whatever unless he leaves the cover off.

Mr. URION. He would be required in that case, would he not, to furnish only a car that had a cover to it, and not a flat car?

Mr. MANN. I say the question is whether Congress can require the carrier to furnish a covered car.

Mr. URION. I think it is already settled that the carrier must furnish the proper equipment for carrying the commodity which he holds himself out to carry.

Mr. MANN. Is not refrigeration a necessary equipment for the carriage of peaches from Georgia to Boston?

Mr. URION. It is not a necessary element. It is an aid. It is an aid, and preserves the fruit in transit.

Mr. MANN. Is it not absolutely essential?

Mr. URION. It may be essential.

Mr. MANN. Is it not absolutely essential in the carriage of peaches from Georgia to Boston that they be refrigerated?

Mr. URION. Yes, sir; for that distance it is.

Mr. MANN. That being the case, has not Congress the same power to require ample accommodations to be furnished to preserve the fruit so far as can be properly done by further aid as it has to require what is necessary to preserve sugar from rain?

Mr. URION. And insure against the inherent defects in it? No, sir; I believe not.

Mr. MANN. They do not insure. They only furnish such accommodations as they can.

Mr. URION. I think the Supreme Court and our text writers who have studied that question take a contrary view of it.

Mr. STEVENS. I have here a citation from a case of The Prussia, 93d Federal Reporter, page 837. You have cited another case but from another volume (88 Fed. Rep.), 531, and an entirely different case. I will read this:

> It is the duty of the carrier by water, when he offers a vessel for freight, to see that she is in a suitable condition to transport her cargo in safety; and he impliedly warrants that this duty has been fulfilled. And when he proposes to transport across the Atlantic a cargo of frozen meat, we agree, as was adjudged in The Maori King (1895), 2 Q. B., 550, and Queensland National Bank *v.* Peninsula and Oriental Steam Navigation Co. (1898), 1 Q. B., 567, that he must be taken to stipulate with the shipper that the vessel is provided with suitable apparatus of requisite efficiency to enable him to deliver it in proper order.

Mr. URION. Yes; that is, where he contracts to do it. He is not obligated; but if he binds himself to furnish refrigeration, he must do it.

Mr. STEVENS. No, this language is that he must be taken to stipulate——

Mr. URION. In his contract.

Mr. STEVENS. It assumes that he stipulates to provide proper apparatus.

Mr. URION. I do not recall having seen that case. The matter is touched on in this one I have cited.

Mr. STEVENS. The language is here: "When he proposes to transport across the Atlantic a cargo of frozen meat, we agree * * * that he must be taken to stipulate," and so forth. Is not that an implied contract?

Mr. URION. Exactly; when he takes frozen meat and agrees to carry it safely, he must.

Mr. MANN. Then what difference is there when the railroad takes a cargo of peaches?

Mr. URION. It is a matter of contract.

Mr. MANN. No.

Mr URION. I think you will find it is a matter of contract on the commodities going abroad in these various vessels.

Mr. MANN. The carriage of meat abroad being a well recognized trade, do you think that Congress could regulate that in any way on vessels entering the ports of this country?

Mr. URION. I think it is altogether a matter of contract, under the decisions and under the law.

Mr. MANN. Very well. But where a trade grows up and a custom grows up which becomes incorporated into the trade, which was not known ten or fifty or one hundred years ago but which still becomes recognized as a necessary part of that trade and that necessity is recognized by the common carriers themselves, do you say that Congress has not the power to regulate that?

Mr. URION. I doubt it.

Mr. MANN. I do not have any doubt about it whatever.

Mr. STEVENS. Here is a case in ninety-third Federal Reporter, the case of Martin *v.* Southwark, where it was held that a water carrier holding itself out as a common carrier of perishable goods has the initial duty of providing and operating proper refrigerating apparatus for the safe carriage of such commodities.

Mr. URION. What case is that?

Mr. STEVENS. It is the case of Martin *v.* Southwark, (191 U. S., 1). Of course we can not settle that question here. You had better proceed with your statement.

Mr. URION. I have nothing further to say on the subject at this time. I thank you, Mr. Chairman and gentlemen.

STATEMENT OF MR. THOMAS B. FELDER, JR.—Continued.

Mr. FELDER. Mr. Chairman, the committee has very kindly extended to me a good deal of time, still I would like to be heard now briefly.

Mr. STEVENS. Proceed, then.

Mr. FELDER. On the question just propounded by the gentleman from Illinois in relation to the duty of carriers to provide facilities for freight, permit me to say I have taken occasion to look into the question to some extent, and the result of my investigation is that it is within the jurisdiction of Congress to require carriers to furnish ordinary facilities for the transportation of freight. For instance, take the case referred to by the gentleman from Illinois.

It would be necessary to cover the sugar, because if it was not covered it would be totally destroyed by rain and moisture. I do not understand that it can be made the duty of the carrier to furnish any extraordinary devices for the protection of perishable commodities, and I put this as an illustration——

Mr. STEVENS. Would you not admit that it was obliged to furnish ordinary devices adapted to the particular commodity?

Mr. FELDER. Yes, sir. Of course that must be conceded. Let me put this case. Ice is, per se, a very perishable commodity. Railroads are required to transport ice. I take it that the railroads engaged in interstate commerce could be required by Congress to furnish a reasonably well constructed car to be used in the transportation of ice, but I assume that no man will contend for a moment that the railroads can be required to furnish specially constructed refrigerators, so that ice will be delivered at its destination in the same state of preservation that it was in when received.

Mr. MANN. You admit that if the railroad company attempted to carry ice on a flat car with the sun shining on it they would not permit it, and Congress could regulate it?

Mr. FELDER. As to the carrying of freight and the furnishing of facilities I contend that Congress has no right to require railroads to

go further than to furnish the ordinary facilities for the transportation of freight.

Mr. MANN. Is not the furnishing of ice an ordinary facility for the transportation of peaches from Georgia to Boston?

Mr. FELDER. No, sir.

Mr. MANN. Can you transport peaches from Georgia to Boston without ice?

Mr. FELDER. My opinion is that you can not by freight.

Mr. STEVENS. During the peach season?

Mr. FELDER. During the peach season.

Mr. MANN. So that they would be of any value at all on their arrival?

Mr. FELDER. Nor could you transport fresh beef without ice.

Mr. MANN. That is exactly it.

Mr. FELDER. But I believe for Congress to require the carrier to furnish this ice would be requiring the carrier to furnish extraordinary facilities for the transportation of these things, and this Congress has no constitutional power to do.

Mr. MANN. You say extraordinary facilities; but I ask you whether the furnishing of ice is not an ordinary facility in the transportation of peaches?

Mr. FELDER. I answer that in this way: Some years ago icing was unknown; then peaches, in limited quantities, were shipped, and when they reached their destination some of those peaches were decayed and others were not.

Mr. MANN. Were peaches, a few years ago, in any quantity whatever shipped from Georgia to Boston by freight?

Mr. FELDER. No, sir; they were shipped by express.

Mr. MANN. They were not shipped by express?

Mr. WANGER. He says they were shipped by express.

Mr. MANN. So that it shows his proposition has no application to that shipment. The business has grown up now. No one would have imagined fifty years ago that a steamship company would be required to furnish refrigeration for the shipment of meat from New York to Liverpool.

Mr. FELDER. Precisely so.

Mr. MANN. Do you think we can require it now?

Mr. FELDER. Without answering that question directly I will make this observation. Of course that is not now up for consideration, because nothing of the sort is embraced in the bill introduced by the distinguished chairman. But if you require the railroad to do it you have got to give the railroad extra compensation for doing it.

Mr. STEVENS. There is no question about that.

Mr. FELDER. But this is the question before this committee, and this is the question that we are discussing, namely, whether or not the Federal Congress has the constitutional right to declare the private car companies engaged in this sort of commerce to be common carriers, and to put them under the jurisdiction of the Interstate Commerce Commission. That is substantially what we are discussing, not what Congress might require the agencies of interstate commerce to do.

Mr. MANN. Just one moment. Is not this the question before Congress, namely, whether, finding that refrigerator car lines are now engaged in furnishing ice and thereby preserving fruits on freight

traffic passing from one State to another, we can not regulate the practice that we find is in existence?

Mr. FELDER. I say that you can not, and I want, in this connection, to answer a question which goes to the very fiber, the gist, of this matter, the question which was propounded by Mr. Townsend, the gentleman who sat here yesterday, to Mr. Urion. The thing recurs to that, at last: What is the relationship between these various parties under this form of contract? Mr. Townsend asked Mr. Urion if it was possible for the private car lines, under the form of contract which was put in evidence, to bring suit for the refrigerator charges when the shipper and the refrigerator line were not parties to the contract, or whether or not he would have to sue the railroad, and who would have to be sued in such case.

Mr. MANN. It is so well settled in my State, and I think in most of the other States, that I do not think it is worth while to discuss it.

Mr. FELDER. What is that?

Mr. MANN. I say that is a question that is so well settled, as a legal proposition, out in my country, that it is not worth discussion.

Mr. FELDER. And yet this whole question hinges on the relationship between those parties, and it is dual in its nature.

The principle of law does not exist in any one State, but is universal, so far as I know that under this form of contract, where the railroad undertakes to contract with the private car line to furnish refrigeration, the railroad is acting in the capacity of agent for the shipper, and the shipper is his undisclosed principal, and where the service thus contracted for is performed by the railroad, the railroad is merely an agent, and is not a proper or a necessary party to any suit growing out of breaches of the contract. When the contract is made, and it develops that the contract is made by the railroad for A, B, or C, then the cost of the refrigeration can be sued for and collected without making the railroad a party, the shipper being the undisclosed agent of the principal.

Now, on the other hand, if the railroad contracts with the refrigerator company to furnish this icing, and it is improperly done by the refrigerator company and as a result of the improper icing, or improper re-icing of the car, damages ensue, why, clearly the railroad is neither a necessary nor a proper party, because in that transaction the railroad is the agent for the undisclosed principal, and the undisclosed principal is the private car line, and the shipper can sue originally the private car line for any damages that may have ensued.

Now, let me call your attention just briefly to the character of the contract, and I think the reason will become apparent why Congress has nothing to do with these car lines. As I say, the relationship is dual. The railroad leases from private car lines exactly as they do from trust companies, and that question was fully gone into a day or two ago—as to how they were leased from trust companies. The railroad leases these cars from the car lines, and they do not receive a weekly rental or a monthly or a yearly rental for those cars, but they receive three-fourths of 1 cent for each mile traveled. Now, the car thus becomes a part of the system of cars of the railroad company which leases it, and if that car becomes derailed in transit and the fruit with which it is loaded is destroyed, the railroad is responsible because that car is a part of the property of the railroad. But if, under this

contract, the refrigration—the icing—is improperly done, if the refrigeration is poor and damage ensues to the shipper, the private car line is responsible in damages, and the suit is brought against the private car line.

Now, let us see about the character of the service. I have not the decision before me, but some court of last resort has held, and I have it upon my brief, that where a man is engaged in furnishing coal in more than one State for the agencies of interstate commerce—for the engines on a railroad—he is not engaged in interstate commerce, because the trains thus engaged are merely the instrumentalities, the agencies of commerce. The things that they carry constitute the interstate commerce. In other words, the train that starts away from Fort Valley en route to New York with these cars attached is not interstate commerce; it is the agency of interstate commerce.

And to illustrate that, every single, solitary one of those cars, including the Armour cars, is subject to State taxation from the time it leaves Fort Valley until it returns, and the Supreme Court of the United States has pointed out the way in which the calculation must be made to subject those cars to taxation. But the things carried in those cars are not subject to taxation. That is the interstate commerce. And we get these two things confused. The railroad is the agency of interstate commerce, while the thing it carries is the interstate commerce. One is subject to taxation, and the other is not.

Now, some question was made a few moments ago—I think the chairman of the committee suggested it—as to the right of Congress to compel these corporations to furnish food. Now, that is a matter for State regulation and not a matter for Federal regulation. Various States have passed laws requiring the railroads running within their borders to furnish ice water, heat, and other things conducive to the comfort of the passenger. I apprehend that it will not be contended that the Federal Congress has any authority like that which the States exercise. The States exercise it because these companies are chartered by the States, and they do it in the exercise of their police power.

Mr. MANN. You think that Congress could not legislate as to the question of heating the cars engaged in interstate commerce?

Mr. FELDER. I do not think so, especially freight cars. How would you regulate it?

Mr. MANN. There is not the slightest doubt about it. We have made a provision in reference to the use of air brakes, purely as a matter of safety.

Mr. WANGER. And as to the automatic couplers, also.

Mr. MANN. Yes, and everything like that. There is not the slightest doubt about our authority to regulate that.

Mr. FELDER. I have been practicing law about twenty years, quite actively engaged, and with all due deference to the views of the committeeman I have yet to find any question about which there is "not the slightest doubt." I think all questions involving legal matters are hedged about by doubts.

Mr. MANN. There are many legal questions about which there is not the slightest doubt, Mr. Felder.

Mr. FELDER. There is another question, raised, I think, by the chairman of the subcommittee, to which I want to refer. The largest common carrier hauling peaches in the State of Georgia is the Central

Railroad. The Central Railroad, so far as carrying peaches is concerns, originates and ends in the State of Georgia. Both of the termini of this road are in the State.

The road, I am informed, transports more peaches than all the balance, or almost as much as all the balance, of the roads in this country put together. The Central Railroad of Georgia is chartered by the State of Georgia. It has no Federal franchise. And, therefore, as to this business—this private-car business—Congress, I submit, has no power to require the Central Railroad of Georgia, or any other line that operates wholly within a State, to furnish this sort of equipment. Now, what right would the Commission have to fix a rate? Absolutely none. And Congress has no power to confer the right to fix a railroad rate for the transportation of peaches within the State of Georgia.

Mr. MANN. Was not that question settled by the Supreme Court of the United States, as to the Central Railroad of Georgia in the Social Circle case, where the same thing was set up?

Mr. FELDER. No, sir. The Social Circle case was the Georgia Railroad.

Mr. MANN. The Social Circle was a very far-reaching case.

Mr. FELDER. Was that the Jim Crow car case?

Mr. MANN. No, sir; that case involves the rate from Cincinnati and Chicago to Social Circle, where the railroads set up that they only charged the local rate from the points in their State, where they took their freight, to Social Circle; and the question was involved of the rate to Atlanta, and the Supreme Court held that that was of no avail.

Mr. FELDER. But here is the point I am making. I did not finish what I was saying. The rate operates entirely within the State, and therefore if a rate was made by the Interstate Commerce Commission, if a rate was made in this matter, then they would have the right to charge the full local rate, and therefore if the full local rate was charged by that road, plus the rate, whatever it might be, fixed by the Interstate Commerce Commission, the rate for that business would be so high as to handicap the shippers of fruit and vegetables. That is the point I am making on that.

Mr. MANN. You mean they would go out of the business of handling fruit?

Mr. FELDER. I mean this, that if they charged a local rate from one end of their road to the other, and then there was added to that the rate fixed by the Interstate Commerce Commission. As it is, we get the benefit of differentials.

Mr. MANN. The Supreme Court held that you could not charge a local rate on a shipment intended to go outside of the boundaries of the State, no matter whether your railroad was wholly within the State or not.

Mr. FELDER. That decision has escaped me.

Mr. MANN. That is one of the most prominent decisions there is on railroad rates—the Social Circle case.

Mr. FELDER. No, sir. The railroads could decline to accept a carload of peaches beyond the end of its line, and no contrary doctrine has ever held in any court.

Mr. STEVENS. No; it can not. It can not decline to take a carload of peaches to the end of its line.

Mr. FELDER. They can not decline to take them to the end of the line, but they can decline to take them beyond the end of the line.

Mr. MANN. If they wish to take the freight to the end of the line and unload it out of the cars, that is their privilege, but they can not take it to the end of the line and transfer that carload of peaches to another line for transportion further and escape the conclusion that that is interstate commerce.

Mr. FELDER. I admit that.

Mr. MANN. Now, your proposition is that they can not transfer it to the end of the line and take it out of the car, and that this would put them out of the business?

Mr. FELDER. My point is that if you require the railroad to furnish its own equipment for the transportation of peaches, no small railroad can afford to own the equipment.

Mr. MANN. That is a question of policy.

Mr. STEVENS. Where is your home, Mr. Felder?

Mr. FELDER. Atlanta, Ga.

Mr. STEVENS. Is there, or was there, a newspaper published there last August entitled "The Atlanta News?"

Mr. FELDER. There was; yes, sir.

Mr. STEVENS. What kind of a paper is it, a reputable paper?

Mr. FELDER. The Atlanta News? Yes, sir; it is a small evening paper published in our State.

Mr. STEVENS. A daily paper?

Mr. FELDER. Yes, sir.

Mr. STEVENS. In the Atlanta News of the 6th day of August, 1904—that was the middle of the last peach season, was it not, right in the middle of the peach season?

Mr. FELDER. I would say it was. Of course, there are peaches which ripen a little later in north Georgia than in south Georgia.

Mr. STEVENS. A statement appeared in the Atlanta News on the 6th day of August, 1904, which I will read, as follows:

The statement of the Armour outfit that the railroads are glad to make exclusive contracts because it has the equipment is not borne out by facts. In The News of August 6, 1904, the Atlanta, Ga., correspondent wrote:

"The failure of the refrigerator people to furnish the shippers of north Georgia with a sufficient number of refrigerator cars for use in shipping their peaches has seriously affected the growers during the past week. Although the shippers and transportation lines have been clamoring for more cars, the refrigerator people have appeared indifferent or careless in furnishing them. On account of the scarcity of cars the shippers have suffered heavy losses. In a few instances, upon the request of shippers who were unable to secure refrigerator cars when wanted, the transportation lines pressed into service nonrefrigerator cars in order to move the surplus fruit already on the platforms at the stations.

"COULD NOT GET CARS.

"Being unable to secure the required number of cars for the transportation of fruit already gethered and ready for shipment, a large number of growers at Marietta, Ga., a station on the W. & A. R. R. and Atlanta, Knoxville & Northern Railway, held a meeting and served notice upon the transportation lines that unless they were furnished with refrigerator cars at once they would undertake to hold the roads responsible for any damage sustained. Similar action was taken by the growers and shippers at Adairsville, Ga., a local point on the W. & A. Railroad, and one of the largest peach shipping points along that line.

"Very few shippers here are aware of the fact that the special lines of railroad, or those leaving the Georgia points, are, in some respects, to blame for the shortage in refrigerator cars. Armour has binding contracts signed with those roads which prevent any other refrigerator line from furnishing cars. There would have been no shortage in refrigerator cars if other than the Armour cars were allowed in the State. The Continental Fruit Transportation Co. was prepared to furnish several hundred

cars to the Georgia shippers if the railroads would have allowed it to go into the peach territory. Several New York and Boston commission men had assurances from the C. F. T. people that they had the cars and were ready to put them down there, but were shut out by the Armour contract."

That is the statement. What have you to say about that statement?

Mr. FELDER. Without being informed about the facts, I want to say this, that The News is an eminently reliable and respectable sheet, published in my State. But statements often find their way into the columns of that paper, as they do, I believe, into papers throughout the country, which are very inaccurate. Mr. Fleming, the agent of the Armour people, is in the room, and can answer about this of his own knowledge. I can only answer on information.

STATEMENT OF MR. I. M. FLEMING.

Mr. FLEMING. I was in Atlanta at the time, Mr. Stevens. I was there in charge of the work. I would like to ask how much of that article that you have read was quotation and how much original?

Mr. STEVENS. All that I read was quotation, and I read all the quotation.

Mr. FLEMING. As to the C. F. T. part of it, and what they were willing to do?

Mr. STEVENS. I read all the quotation, from there down to there [indicating on article].

Mr. FLEMING. I was thinking that probably the latter part—the part as to the C. F. T.—might have been a little misleading.

Mr. STEVENS. No, sir; I read the whole quotation.

Mr. FLEMING. The actual fact is that just about the first ten days in August, when the heaviest part of the crop in north Georgia was moving out, was the time in which that excessive movement, far above the estimate, of which Mr. Robbins spoke the other day, occurred, which amounted to about 1,000 cars. They had estimated that there would be about 4,000 cars of peaches to move out of the State of Georgia, and in reality there turned out to be something over 5,000 carloads, and the principal increase was in this district they referred to there, just north of Atlanta, between Atlanta and Chattanooga, on the W. & A. road and on the Southern Railroad.

Mr. STEVENS. You have exclusive contracts with both those lines?

Mr. FLEMING. Yes, sir; with both of those lines. The railroads have always recognized there that we had a right to a notice of twenty-four hours to fill an order for a refrigerator car for loading, to be furnished at the station within twenty-four hours of the time the order was placed. During about three days of the heaviest movement we were practically half a day—well, say from twelve to twenty hours—behind in filling the orders; but we were within the twenty-four-hour limit. I was located at Atlanta, and was, I will say, in actual charge of the work. In that movement during those ten days, the heaviest part of the movement, we moved between 2,200 and 2,300 cars. And that was, I should say, a movement 50 per cent higher and heavier than that which was anticipated or of which any notice was ever given by the railroads or the shippers. It exceeded the estimates by 50 per cent; yet we did fill those orders, as I say, within the twenty-four-hour limit, possibly with one or two exceptions at isolated points.

And you heard the statement of Judge Gober, who is one of the biggest shippers, if not the largest one, at Marietta.

Mr. FELDER. He is the biggest shipper in north Georgia.

Mr. FLEMING. Yes; he is the biggest shipper north of Atlanta, and I think his statement ought to carry some weight as to the actual conditions.

Mr. MANN. Did you refuse to permit the use of other refrigerator cars and thereby prevent the furnishing of sufficient cars for this movement?

Mr. FLEMING. No, sir; the question never came up.

Mr. STEVENS. It is stated in this article that there were two meetings of growers held, one at Marietta and another at Adairsville, and that the shippers at those meetings stated that they had not sufficient equipmemt furnished by your company, and they demanded sufficient equipment from other companies, but could not obtain it on account of your exclusive contracts.

Mr. FLEMING. Well, that would work out as an actual fact; yes, sir. That would be the fact if they had asked for those cars. I do not know that they did take such action.

Mr. STEVENS. All I know is what is stated in that article from the Atlanta News.

Mr. FLEMING. I think that the article there referred to is grossly exaggerated.

Mr. MANN. Under your exclusive contracts with these railroads, do you mean to say that if you can not furnish the cars, the railroad is not permitted to get the cars from some other company?

Mr. FLEMING. Well, I think the Central of Georgia contract that was read yesterday bears right on that point, that in case we could not get the necessary number of cars there in time, or it became apparent that we would not be able to fill orders, that contract provides that they could go out and get other cars and we would be compelled to ice them, and give them the same attention as though they were our own cars.

Mr. MANN. So that, as a matter of fact, under your contract with that railroad company, if you did not, last August, furnish your own cars in sufficient quantities to handle the freight, within the twenty-four hour limit, the railroad company had the right——

Mr. FLEMING. They had the right.

Mr. MANN (continuing). To get other refrigerator cars and compel you to ice them?

Mr. FLEMING. We would have had to ice them and give them the benefit of the same facilities for icing and reicing that we have for our own cars. That case has happened once before.

About three years ago in North Carolina there was a temporary scarcity of cars there one day. There had been some interruption to the southbound empty movement, and I think there were about 10 C. F. T. cars, the cars of the same line referred to in this article you have just read, delivered to us by the railroad, and those cars were handled and iced on the same terms as our own cars.

Mr. FELDER. I will add to that statement that Mr. Dean, a lawyer from Rome, Ga., made a statement in behalf of the Esch-Townsend bill, and in advocacy of it before the Senate Committee. Before he made the statement I asked him whom he represented, and he said the Association of Peach Growers in North Georgia.

I asked him if there was any dissatisfaction about the car service, and he said that it was very slight in comparison with the rates that the railroads charged, and he informed me, furthermore, that he thought the excuse of the car lines for not rendering the most efficient and satisfactory service during the last season was very good, that the peach crop ripened very rapidly, and that peaches had been grown in very small quantities in North Georgia prior to last season; that the industry had about doubled, and it seemed that nobody was in a position to foretell the very large increase that had occurred.

Mr. FLEMING. Just in that connection I want to say that our contract provides that if we fail to fill these orders within the prescribed time, say the 24 hours, and damage is done to the shippers they have the right to call on us to refund in damages equivalent to the lack of facilities. We have not received any claims from the North Georgia shippers, and that crop was moved last August, and it is now the middle of February.

Mr. STEVENS. You have not received any claims from them?

Mr. FLEMING. I do not think we have received one; not a single one. Some may come in. I believe the statute of limitations is four years. Some of those claims may come later. But we have not had a single excessive claim, and I am not positive if any claims at all have been presented.

Mr. ESCH. Have you had any claims from any other sections on account of a shortage of cars?

Mr. FLEMING. Yes, sir. The first year of the operation of this exclusive contract with the Central Railroad of Georgia—this was in 1898—practically the same condition existed, except that it was in the southern part of the State, that existed in the northern part of the State last year—that is, the shippers were unaccustomed to growing the fruit on a large scale, and did not know how to estimate their crops; and where we moved that year, I think, about 2,000 or 2,100 cars, it had only been estimated that there would be about 1,200 or 1,300 cars. Now, at the last minute, when the rush of the crop came on, before we realized it we were out of cars and out of ice, and I know that for ten successive days we shipped 35 carloads of ice a day from Cedar Lake, Ind., to Macon, Ga., and if any accident had happened to one of those special train loads of ice, we would have been "up a tree," as the saying is, the next day, to ice the cars that were coming back empty for loading. That kept up for ten days.

Armour & Co. shipped 7,000 tons of ice, because they were obliged to ship it, because they were under contract to furnish the cars and the ice. And we had claims when the season was over, which was by the end of July—after the season was over, during the months of August and September, we had claims presented to the amount of about $17,000 for failure to furnish cars within the twenty-four hour limit. Some of the peaches were not even shipped, although they were tendered to the railroad, and before the railroad recognized the fact that it was up to them to furnish a car within twenty-four hours, and where they were not furnished some of the peaches were just allowed to rot on the platforms.

Now, we settled all those claims except one, and one of the attorneys of the company from Chicago met me at Atlanta in the early part of October, as soon as our season was over in Maryland, where I was working, and we spent six weeks there and settled all the claims except

the one referred to here by Mr. Urion, the claim of Doctor Ross, which was in the courts. We did not claim that we did not owe them money, or that we had not damaged them, because we knew that we had. The only question was how much we owed them. That case was fought in the court for four years, and they finally got a verdict which was within $100 of what we offered them before. There was no contention on our part that we did not damage this fruit, and, as I say, we finally settled at satisfactory figures.

Mr. Willingham, who came here the other day and testified, had a claim of $1,700, and it was settled for $1,100 upon our showing him what was the actual loss, and he was open to argument, and was a just man, and he settled and we paid him cash. Now, that is the only charge. We have these claims come up all over the country. You can not always have your service perfect, some mishaps will occur, and it comes within my province to settle claims for improper service on that account. I have worked in the territory between Florida and Pennsylvania and New York.

STATEMENT OF MR. THOMAS B. FELDER, JR. - Continued.

Mr. FELDER. I want to put this question to the committee. I think it is vital to the fruit growers of my State. Suppose you should pass a bill requiring the railroads to furnish this equipment, and turn that whole matter over to the Interstate Commerce Commission. As I have said, so far as the Central Railroad is concerned, the peaches and the cantaloupes originate around Fort Valley. The line of that railroad ends in the city of Atlanta, going to the eastern markets, and suppose when that order was put into effect the Central Railroad should say to the fruit growers around Fort Valley, "If you have any peaches to transport, I will put them in my box cars and deliver them to Atlanta and turn them over to the connecting lines. I will simply make a contract with you to take these peaches to Atlanta. The Federal Congress has no jurisdiction over me; I am an intrastate carrier." Suppose that should be their attitude, and suppose they should refuse to build the ice houses and furnish this refrigeration. I respectfully submit that that would be a natural result, because the railroads would not be able to furnish the immense amount of equipment necessary to carry a crop gathered and marketed within the space of four, five, or six weeks—it would take that period to gather it. Now, would not that result, I submit, in the annihilation of an industry which is growing and developing as almost no other industry is growing and developing in this country? Therefore I say that I am not surprised that a great number of peach growers of my section, and a great many berry growers and melon growers have come here voluntarily and gone before this committee, and have asked permission to present their views about this matter, and have petitioned Congress to stay its hand and not be the instrumental means of destroying and annihilating this industry.

Mr. STEVENS. According to Mr. Urion we have not any hand.

Mr. FELDER. Assuming, now, that you can deal with this. I do not grant that, but assuming that the act of building ice plants along at intervals of 90 to 100 miles where the trains are stopped and the cars are "kicked out" and re-iced and then coupled up and moved along to their destinations, is interstate commerce, although I do not

think that is in any sense an act of interstate commerce or subject to regulation by the Federal Congress; but granting for the sake of argument that it is so subject, and supposing that you pass this act and put it upon the statute books, do you not simply destroy the thing that you are endeavoring to foster and protect?

Now, since I came to Washington, and prior to my coming to Washington, I have gone through the testimony of everyone who has testified here, and also in the various hearings before the Interstate Commerce Commission, and as far as I can find, or as I have been able to discover, nobody complains about the service or the charges for refrigeration except a few middlemen whose business and calling has been rendered precarious, if it has not been taken away entirely by reason of the facilities afforded by this private car line.

Mr. MANN. Mr. Urion made that same statement. If you have not already done so, I wish you would explain to us how increasing the amount of this traffic and increasing the quantity of the peaches which are delivered to the middlemen ruins their business.

Mr. FELDER. I will make that so plain that he who runs may read. Now, I am a sort of a farmer myself. I raise melons and various other farm products. I have farms in Georgia and in Indiana.

Mr. MANN. I do not see what you want to practice law for.

Mr. FELDER. I practice law so as to keep my farms going. If my income as lawyer is cut off I would be compelled to quit farming.

Mr. STEVENS. You are not a success as a farmer, then?

Mr. FELDER. I am a William Jennings Bryan kind of farmer, an agriculturist; I spend what I make practicing law on my farm. I am not a William Jennings Bryan man in any other sense.

In the olden times, before the advent of the private car lines, under the old method, the farmer would ship a carload of watermelons or a carload of cantaloupes to one of the near-by markets, Savannah, Chattanooga, or Atlanta, and then he would sit down and wait, going to the post-office day after day to get his remittance; finally, after several weeks of anxious waiting, he would get a letter about to this effect: DEAR SIR: Your watermelons came to this market—or your cantaloupes, or berries, or peaches, as the case might be—in a very defective condition. Indeed, could find no sale for them. I advanced freight charges, and I therefore hope that you will send me by return mail $50 or $75, or $100—whatever the amount might be—to cover the freight charges.

Now, that farmer had no means of knowing whether that commission merchant had told the truth about the transaction or not. He had no means of keeping tab on the commission merchant.

Now, I do not say that commission merchants are more dishonest than other people, but the old system afforded a certain kind of temptation to the commission man to take all the corn for the toll and swear to the sack.

Now, under the old method the watermelons were shipped under a contract whereby the railroad was relieved from liability for damage from natural causes. Under the new system the private-car lines must see that every load of these refrigerated products, peaches, and such things are delivered in good condition, and if they fail to do it, they have to pay the damages, and a carload of peaches is a very valuable thing when it is delivered in good shape in the market.

Under the present system that car arrives and the agents of the car line are there to inspect it and to report the condition in which that car was received at the point of destination. Not only that, but commission merchants would not incur the hazard of the traffic in this business on their own account under the old system. The shipments on consignment were on account. Under the new system, where transportation is made certain, and where the condition of the fruit when it reaches its destination is made certain, the commission merchants instead of handling it on account, go out among the peach, berry, and melon growers and buy directly from the farmers, because they can calculate with reasonable certainity that the things they purchase will be delivered within a certain time in the market, and that they will be delivered there in prime condition. That is the situation.

Mr. MANN. No, your whole argument is in favor of this thing being a benefit to the commission merchant.

Mr. FELDER. Not at all, sir.

Mr. MANN. It seems to me that way.

Mr. FELDER. Well, I have been very unfortunate, then, in making myself understood.

Mr. MANN. So far, the only reason that you have given in favor of the commission merchants not being in favor of the refrigerator lines is in favor of it.

Mr. FELDER. In answer to that I want to say that when a man handles a thing on your account, and on a commission, he is a commission merchant; but he ceases to be a commission merchant when he goes out among the farmers and buys their products straight out.

Mr. MANN. Whether he is a commission merchant or not, he continues to exist and do business. Now, why should he be in favor of handling rotten stuff on account rather than being permitted to do what he does now, namely, to go out and buy it on his own account?

Mr. FELDER. It ought to be perfectly obvious to the gentleman that it requires capital to do that, and the other sort of business requires very little or no capital. There are not many engaged in it, because the volume is larger and the profit is less.

Mr. STEVENS. None of those gentlemen who have appeared before this committee, or who testified before the Senate committee, are men of that class—those having no capital or responsibility.

Mr. FELDER. Well, I should imagine from reading the testimony of Mr. Ferguson that he is not a very large dealer.

Mr. STEVENS. No; but he buys on his own account. He goes into the field and purchases fruit, buys it and ships it whenever he can get it to advantage. He is entirely reliable and truthful.

Mr. FELDER. My recollection of it is that he stated that he handled 40 cars only last year.

Mr. STEVENS. I do not think that appeared before this committee.

Mr. FELDER. I read it, I suppose, in the testimony before the Senate committee.

Mr. STEVENS. However, conceding that he only purchased 40 cars, those were his cars of goods and he was entitled to fair treatment, charges, and facilities.

Mr. FELDER. I do not know Mr. Ferguson. I assume that he is a very nice man, and, no doubt, a very honest man; but of all the commission merchants in the United States who are aggrieved by the car

; and their manner of doing business, I think only two of them
e here to present their grievances.
r. STEVENS. I know, but they represented a very large number of
itable concerns.
r. FELDER. Well, I will not go into that.
r. MANN. These people who go down in Georgia and buy peaches
ship them to Boston—are not those peaches when they arrive in
on handled by the commission men?
r. FELDER. Not altogether.
r. MANN. Generally, do they not reach the retail trade through
commission men?
r. FELDER. I never had the pleasure of meeting Mr. Hale until he
fied before this committee. I paid very strict attention to his tes-
ny, and my recollection is that he said that he was a citizen of
necticut, and that he was engaged in the fruit industry of that State,
that he had a large acreage in Georgia, and he added—and my
rmation on the subject had been to the same effect—that he was
argest individual peach grower in the world. He has the reputa-
in my State of having grown very rich in that industry, and he, in
iling the particular method pursued by him in transacting his
ness, said that he would ship peaches from Georgia to New York or
East, wherever he shipped them, and when the peaches got there he
ld be there to receive them, or his agents would be there to receive
1 and sell them.
e did not handle his peaches through commission merchants. He
Mr. Willingham and other gentlemen are interested, and vitally
rested, in this industry, because they have their money invested in
If these commission merchants lose by the modern methods of
lucting this business, they can go into some other business; they
e nothing to lose; but the men who came here and appealed to Con-
s to stay its hand, saying that they were perfectly satisfied with
methods pursued by the car companies, have their money invested
he business, and they all said that it was perfectly satisfactory to
).
r. MANN. As a matter of fact, are not most of these people who
ut and buy this class of products, these commission men, engaged
ie commission business, and handling the product which they buy
ieir own houses in the big cities?
r. FELDER. I do not know what a commission man is, except what
s defined to be under the law. When a man goes and buys a thing
ght out, he becomes the owner; when he sells it for his own benefit
s the owner and is not a commission man.
r. MANN. If a man runs a commission house on Water Street, in
ago, but goes down in southern Illinois and buys a carload of
wberries, does that take him out of the class of commission men?
r. FELDER. He is still a commission man.
r. MANN. We have taken him out of the class of commission men.
y is he opposed to that car-line business, then?
r. FELDER. Very few of them seem to be opposed to it. For
nce, one very distinguished man, who has a place in Philadelphia,
e here and stated that the thing was perfectly satisfactory.
r. MANN. You came here, and stated that no one was opposed to
except the middleman.
r. FELDER. If anyone else is opposed to it I have never heard of
).

Mr. MANN. And now you say that there are very few of those who are opposed to it?

Mr. FELDER. Yes, sir.

Mr. MANN. You think those very few men have created a great deal of furore?

Mr. FELDER. I used to be a legislator myself, and I was chairman of a very prominent committee of the House. We had a great many of these sort of things, and when a man hung his hat in our committee room, concerned himself about legislation on subjects in which we had no interest, we would call him a "walking delegate;" and I do not know any difference between the walking delegate who goes about the country and gets up labor compacts, and the walking delegate who goes about the country and gets chambers of commerce to indorse certain legislation. He is none the less a walking delegate, if he is engaged in promoting legislation, even though he is a millionaire.

Now, my recollection is that some gentlemen who do not reside in our State visited several towns therein and called meetings of the chambers of commerce and said, "If you will indorse these various propositions, you will get something for nothing."

Now, we have not attained to that ideal condition, in my State, where we are not willing to get something for nothing; we are like other people.

Mr. STEVENS. I suppose that you would class a man like President Truesdell, of the Lackawanna, or Mr. Cassett, of the Pennsylvania, as a walking delegate because he believes some legislation is necessary on private car matters.

Mr. FELDER. I would not so classify him, as I know nothing about him.

Mr. STEVENS. Have you not noticed that almost every official of a railroad in the United States who has given an expression on this subject says that there should be some legislation on this subject?

Mr. FELDER. No, sir; I have emphatically not.

In conclusion, I have to thank the committee for the attention they have accorded, and the many courtesies shown me during the delivery of my remarks. I regret that I have found it necessary to take up so much of the valuable time of the committee in the presentation of my views in behalf of the great interest I represent.

(Thereupon the committee adjourned.)

FORT VALLEY, GA.,
February 6, 1905.

Hon. E. B. LEWIS, *Washington, D. C.*

DEAR SIR: I beg to call your attention to the fact that the fruit growers of this section of Georgia are greatly interested in the question of transportation of fruits, and are consequently much concerned as to pending measures before Congress that may affect this vital interest.

I do not understand the proposed legislation and have no argument to make in consequence, but I think it will be well to call your attention to one phase of the matter which we think should be kept steadily in mind in whatever action shall be taken in reference to private car lines which handle our business in refrigerator cars.

We do not think that the private car line can be safely driven out of business, as the fruit shipments call for a specialized service on a very large scale for a very short time during any one year. Fort Valley alone used 1,000 cars during the last season, covering a period of not more than five weeks. Marshallville used approximately as many, besides the cars used at other shipping points in this part of the State.

t seems to me that any situation which would force growers to depend alone on the facilities the Central Railroad could provide, without being allowed to ke contracts with private car companies, would greatly jeopardize our power to rket our fruits.

Any legislation which would seem to have the effect of driving private car companies out of our territory alarms us. I know Congress will not want to do anything it will harmfully affect fruit growers, but the question is whether this would not ve this effect. I know you will be willing to hear from your constituents upon is question and that your influence will be exerted to forward what you consider eir interests.

For this reason I have taken the liberty of calling your attention to this matter in e respect mentioned. I need not call your attention to the magnitude of the terests involved. I have written to Senator Bacon on the same line and I will be tisfied that you will take this feature of the question into consideration.

Yours, very truly,

H. A. MATHEWS.

COLUMBUS, GA., *January 31, 1905.*

on. W. C. ADAMSON, *Washington, D. C.*

DEAR SIR: As a fruit grower of Chattahoochee County, I address you on the subject the fruit car agitation now being considered by Congress.

It is the opinion of myself and all others with whom I have talked about the tter that the private fruit-car lines have made possible the development of the it industry of our State. The railroad companies could never be depended upon give satisfactory service in handling the fruit crop, and I therefore ask, on behalf myself and others interested, that you use your best endeavors to prevent any gislation that will tend to change the present system of handling fruit shipments endeavoring to have the fruit cars owned and operated by the railroad companies.

Yours, truly,

H. L. WOODRUFF.

MACON, GA., *February 16, 1905.*

on. E. B. LEWIS,

House of Representatives, Washington, D. C.

DEAR SIR: Your favor of the 3d addressed to D. M. Hughes, president, has just en referred to me for answer from the fact that I am a member of the transportan committee of our association, which has had the matter of rates up, with a view some relief, for the past five years, and therefore I am, perhaps, a little more consant with the rate question.

I will state that our association has already indorsed the movement to give the erstate Commerce Commission or some other body power to regulate the rate estion and power to enforce their decisions. There will be another large meeting our association at Macon on February 22, at which I feel sure a still stronger lorsement will be given.

I note you desire some information in regard to the "private car" system, and it you think something should be done on that line. Our committee have been ng considerable work as regards getting information and will state that we agree h you thoroughly. I understand Mr. Willingham, of Macon, and two or three ier independent growers have been before your committee, but these gentlemen mostly interested in other business and therefore were perhaps not thoroughly sted, although some of their statements were correct. I will answer your quesns first and then give you the views of our committee on the "private car" question.

In answer to your first question, will state that there are no initial or terminal arges except the usual ones which obtain in other lines of business. The Fruit owers' Express, which is the Armour line, and which now control all the private rigerator lines, make a contract with the different railroads in this State by which ese railroads agree to allow no other refrigerators to handle the business, or in ier words, an "exclusive contract." The railroads all over the United States pay Fruit Growers' Express three-fourths of a cent per mile for every mile these cars hauled, whether empty or loaded. All kinds of produce are loaded in these rigerators, and this is all the profit the Fruit Growers' Express get out of the buss except such kinds of produce or fruit which have to be refrigerated.

The charge for this refrigeration has varied in years past according to the compeon in the different sections, going as low as $50 per car from California points to w York, and something like $20 to $30 per car from Michigan points to New York peaches. Since Armour has acquired the control of the competing private lines,

the rate of refrigeration from California points to New York, I understand, is $80 per car, and a somewhat similar rate from Michigan, or perhaps around $50 per car from Michigan. The distance, I believe, from California is between 3,000 and 4,000 miles. The Fruit Growers' Express charge a rate of 12 cents per package, with a minimum of 550 crates, or $68.75 per car, from Georgia points to New York, for a distance of approximately 950 miles.

This amount is of course in excess of the freight rate, and I am informed that the railroads do not participate in any portion of this amount; so, as far as the Georgia business is concerned, the Fruit Growers' Express get three-fourths cent per mile for bringing their cars in here empty, and also get three-fourths cent per mile and $68.75 on the haul loaded from here to New York. These cars make the round trip about every eight days. It is necessary that the Fruit Growers' Express keep a force in the territory to see that the cars are kept moving and see that they are properly iced. The cars require icing at initial point of 6 or 7 tons, and after loaded they are reiced, as the warm fruit generally causes part of the initial ice to melt. The cars are then reiced again at Atlanta, Rockymount, N. C., and Alexandria when necessary; and of course after the car is thoroughly chilled it is not necessary for a full icing at the points mentioned, and I should say from 1 to 3 tons at such points would be ample.

I will state further that we have no means of knowing that this icing really takes place except at initial points, and shippers or consignees are not permitted to examine the bunkers or the cars at destination when going to New York as the Pennsylvania Railway unloads the cars and puts the peaches "on dock" at New York. Examination, however, is permitted at destination at every other point in the United States, except at New York, although it is impossible for a shipper to know the amount of ice put in these cars at re-icing stations except by statement from the Fruit Growers' Express. I am informed that these refrigerator cars cost between $1,500 and $1,800 apiece and that they give a net revenue of about $600 per car per annum, thus paying for themselves every three years. The average life of the cars is from twelve to fifteen years.

Our committee is of the opinion that the service from this State is comparatively satisfactory, or more satisfactory than in years past, when there were several car lines operating on one line of railway, although we have not had this competition for over five years, and it is natural that the service would have been improved no matter how many lines might have operated. We believe, however, that an "exclusive contract" should not be permitted; also that the present minimum weight should be reduced, as the present cars are not capable of properly refrigerating the minimum weight which they demand. It is generally known that the United Fruit Company, which control the banana business, is also owned by Armour, tending to prevent competition in that line, and which will, no doubt, extend to other articles when the opportunity presents itself. These questions, of course, would have to be shown before some such tribunal as the Interstate Commerce Commission, and therefore we strongly urge that the private-car lines be brought under the same act as the one regulating the railroads, and we can not possibly see why this should not be the case.

The railroad question is far more serious with the peach shippers and, in fact, with shippers of all kinds of produce from this section of the country, and I will state that we pay a higher rate than any other section of the United States. The present rate on peaches, in excess of refrigerator charges, is 86 cents from, say, Fort Valley to New York; Philadelphia, 86 cents; Boston, $1.12; Baltimore, 83 cents. The approximate distance to New York is 950 miles. The distance from Fort Valley to Chicago is approximately 900 miles, and the rate is 63 cents; Pittsburg, 64 cents; Buffalo, 65 cents, and Cincinnati, 45 cents. You will note that the so-called western points take a less rate than the so-called eastern points, and this we believe is caused on account of the "close affinity" of the lines operating between this section and the East, while we have apparently had considerable competition to western points. We understand that Charlottesville, Va., and Cincinnati, Ohio, are commonly called basing points for the eastern and western shipments, and the distance to each is about the same from Fort Valley.

The proportion of the rate up to Cincinnati is 45 cents, and up to Charlottesville is 69 cents. We can see no reason for this especially as the larger portion of the business goes East on account of the larger markets there, and therefore the cost of handling per car should be less. We have called the attention of the railroads to this discrepancy time after time but without a satisfactory answer. This is a part of the local situation. Now as regards rates from other sections will state that the car-*load rate on apples* from interior New York State to Macon is 40 cents per 100. *Apples have to be* hauled in refrigerator cars but without icing. No charge is made *for the refrigerator.* Potatoes 40 cents from New York State to Macon. Lemons 40 *cents. Potatoes* from Georgia to New York, I understand, is 90 cents per 100.

ıtes on peaches from Texas points to New York with a distance one-third is approximately the same, and to Boston a shade cheaper. The rate on from California to Boston, I understand, is $1.25 per 100 for a distance of 4,000 miles against our rate, which figures approximately $1.12 for a distance n of about 1,000 miles. You can readily see that while we are more favored ls location all of this is virtually lost by the present rates. We have made ions for the past five years for some relief to the railroads without any suc- atever, and we sincerely hope some bill can be passed where such matters ıresented and a fair decision given and such decision enforced.

rices being obtained for peaches is going to be lessened each year on account of e acreage, and has already dropped now from about $5 per crate several years l to $1.50 at destination. The next crop will probably show over 5,000 cars ı not believe the growers will get cost of production without some relief, ·ill mean the ruination or the hurt of the industry as far as Georgia is con-

I trust you will pardon my long letter, but you asked for full information ardly could condense it into shorter form. I have not seen a copy of the ıd-Esch bill, but I would like very much to see one and would appreciate vs you might wish to express to our association at the meeting on February the defects in present bill. If you consider the information contained herein ıbmitting to Senators Bacon and Clay, you are at liberty to do so, and I sincerely ıt all of our Representatives from Georgia in both Houses can see their way to ny bill which will give relief their hearty support.

ending Hon. Charles Bartlett, Congressman from this district, a copy of this s I feel sure he will cooperate with you on this line.

assurances of my highest respect, I remain.

ours, very truly,

F. W. HAZLEHURST,
Secretary and Treasurer Georgia Peach Growers' Association.

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verage number of Street's Western Stable Car Line cars, Hicks' stock cars, and Cattle Company cars upon the railroads engaged in interstate traffic from West- es points to Eastern and Atlantic States points, covering all cars engaged in haul traffic, the total gross earnings of these cars as reported by the railroads g the same, and the average earnings per car per month is as follows, viz:

Month of—	Total gross earnings.	Average number of cars.	Average earnings per car.
1902.			
	$10,488.17	1,301	$8.06
	6,464.58	997	6.50
	7,265.04	784	9.27
	7,975.69	773	10.32
	6,939.14	764	9.08
	7,674.65	751	10.32
r	7,365.05	853	8.64
	10,263.10	883	11.62
r	10,859.31	1,187	9.14
	14,547.13	1,492	9.75
1903.			
	17,920.39	1,901	9.42
	19,861.07	2,255	8.80
	19,960.62	2,132	9.36
	13,484.27	1,647	8.19
	10,582.02	1,352	8.00
	11,096.33	1,187	9.35
	8,800.08	1,264	6.97
r	10,880.68	1,247	8.73
	10,218.06	1,325	7.71
r	12,379.07	1,314	9.42
	13,010.33	1,347	9.68
	13,930.35	1,539	9.09
1904.			
	20,737.49	2,042	10.16
	22,647.62	2,628	8.62
	24,630.04	2,586	9.52
	20,478.04	2,101	9.75
	15,962.75	1,751	9.11
	11,809.04	1,485	7.95
	11,771.34	1,265	9.31

STATE OF ILLINOIS, *County of Cook, ss:*

Joseph J. Schneider, being first duly sworn, on his oath deposes and says that he is the accountant in charge of the car records of Street's Western Stable Car Line and has served in that capacity for more than two years continuously last past; that he has compiled the above statement and that the same is true and correct in every particular.

JOSEPH J. SCHNEIDER

Subscribed and sworn to before me by said Joseph J. Schneider this 18th day of January, A. D. 1905.

[SEAL.] KATE L. BLADE, *Notary.*

In the matter of charges for the transportation and refrigeration of fruits shipped from points on the Pere Marquette and Michigan Central railroads.

To the Commissioners of the Interstate Commerce Commission.

GENTLEMEN: The New York Commercial of November 16 contained the following item of news which we assume to be correct:

CHICAGO, *November 15.*

An appeal was made to the Interstate Commerce Commission to-day to compel the railroads and Armour Car Lines to reduce the charges for refrigeration exacted against shipments of Michigan fruits. The commission men and fruit shippers were represented by Attorney George W. Plummer, who declared that nothing had been done toward relief, although in its recent decision in the matter the Commission declared the charges to be unjust and excessive, and gave the defendants time in which to correct the evil. Commissioner Prouty stated that the Commission was considering the question and would gladly receive the attorney's ideas as to what relief that body could offer.

These complainants (ourselves) have always maintained that the gravamen of the evil developed by the hearing was the exclusive contracts of the railroads with the Armour Car Lines, that such contracts were and are an aiding and abetting on the part of the carriers in the violation of sections 1, 2, 3, and 10 of the interstate-commerce act, and this main evil will exist so long as the contracts are in force regardless of whether the refrigeration charges shall be reasonable or not.

We claim that the car lines is not a common carrier and, therefore, not subject to the act to regulate commerce and that the evidence discloses that they are violators of other statutes of the United States and subject to prosecution therefor. If these contracts merely provided for leasing cars from the car line we could make no quarrel with them under the present state of law.

Under the head of "Conclusions" in the report and opinion of the Commission in the above-entitled matter, after enumerating certain duties of the railroads arising out of their common-law liability, the opinion proceeds:

"The defendant railways may provide such cars, either by purchase on their own account or by lease from other roads, and, if the latter plan is adopted, they may undoubtedly enter into exclusive contracts like that before us. This has been settled by the Supreme Court of the United States."

If these contracts only provided for leasing cars, the authorities cited would warrant conclusions, but, as was said before, these contracts go a great deal further than leasing cars. The cases cited in this connection were between the carriers and private corporations, and not between carriers and the public, and had to do with a special business. It is said in the Pullman Palace Car case: "The business is always done under special written contracts," while the Commission has already found in the pending matter that all the services covered by these exclusive contracts had been previously rendered by the carriers, as is done in other kinds of ordinary freight, and the hub of the decision in the Central Stock Yards Company *v.* Louisville and Nashville Railway Company (192 U. S., 568) was to the effect that "there is no act of Congress that attempts to give courts the power to require contracts to be made in a case like this," and that the railroad had a right to provide a station for the delivery of stock and to deliver thereat. We submit that the cases cited do not cover the principle or the practice involved in these exclusive contracts.

The Commission say in another place: "It is possible that an order to cease and desist from those exclusive contracts, so long as the rates for refrigeration are exorbitant, might be enforceable." Inasmuch as the Commission has no power to fix rates, we submit that the qualifying phrase, "so long as the rates for refrigeration are exorbitant," should be eliminated from consideration and if it is possible, and if

Commission are agreed that it is within their province to issue an order to the road companies to cease and desist from these exclusive contracts, such order ıld certainly be made because therein lies the only possible remedy under the ɜent state of the law.

/e submit this further consideration that the first question on the facts developed his case is whether the Commission has any jurisdiction in the premises; and if y find that they have none, the matter ought to end, so far as the Commission is cerned, in finding the facts developed at the hearing. If, on the other hand, the ımission finds that it has jurisdiction to make an order to cancel these contracts that such order might be enforceable, we submit that it ought to be done, the sideration which impelled the Commission to refrain from making such an order, ıely, the immediate opening of a fruit-shipping season, no longer existing, and, he event that such order is not complied with, that the Commission should then ɜ steps to enforce compliance. If, on the other hand, the Commission finds that as no jurisdiction to make an order on the facts developed in this hearing, then respectfully protest against suggestions that the car-lines company and the rail-l companies fix it among themselves.

his inquiry first brought to light these refrigeration contracts. The Commission corresponded with these respondent roads as late as November 14, 1903, in ɜect to these refrigeration practices, and as late as November 25. 1903, Mr. B. B. chell, traffic manager of the Michigan Central road, wrote the Commission in ɜect to the refrigeration charges of $45 on a car of fruit as follows:

I find that the car rental of $45 per car (which I understand included refrigera- as well) on the two cars named was charged, as stated; not by this company, ɜever, but by the Armour Refrigerator Car Line, who arranged with the shipper the use of the cars."

/hen this letter was written the exclusive contract with the Michigan Central was ɔrce, and Mr. Mitchell must have known it. These exclusive contracts existing he Michigan roads are no doubt duplicates of all other Armour refrigeration con-ts wherever in force in the United States. These practices have been covert, ıuse the railroads knew them to be illegal, whether under the jurisdiction of the ɜrstate Commerce Commission or not, and this part of the Commission's con-ion, to wit: "This matter can be much better dealt with by the car-lines com-y and the railway companies than by the Commission, and it has been thought , this being a general investigation, to leave the matter open during the present ɔping season. If by the 1st of next October these refrigeration charges have not ɪ readjusted, the Commission will take further action in the matter, either in proceeding or by some new proceeding," it seems to us is a recognition of these ıusive refrigeration contracts, and that such recognition of their legitimacy is not ranted by the common law nor by the interstate-commerce act, whether the ımission may have jurisdiction in the premises or not.

espectfully submitted.

KNUDSEN-FERGUSON FRUIT COMPANY.

ɔre Interstate Commerce Commission. In the matter of charges for the transpor-ɹtion and refrigeration of fruits shipped from points on the Pere Marquette and ɹichigan Central railroads.

Brief on behalf of Knudsen-Ferguson Fruit Company.

he subject in hand is to be considered in the light of certain well-known and blished legal principles to which attention is first invited.

here seems to be no controversy over the facts, excepting only in respect to the onableness of certain refrigeration charges, and the relatively unimportant weight he reasonableness of the charge is so marked and so conspicuous that there is ger of clouding the main issue by considering this question at all, i. e., referring he refrigeration charges as they are now levied and collected on these roads. Our tention on this point, however, is that no charge in this connection is collectible, r and above the freight rate for fruit, set out in the schedules filed with the ımission.

he Pere Marquette and Michigan Central railroads are and have been common iers during all the time covered by this investigation, engaged in carrying fruits ɪ the Michigan fruit belt to the centers of population in the various States.

A COMMON CARRIER MUST CARRY FOR ALL.

The primary duty of a common carrier is to carry for all. There needs no citation of authorities to this point. Such is the doctrine of the common law, and that doctrine is operative upon all interstate commercial transactions, except so far it may be modified by Congressional enactment. (Western Union Telegraph Company *v.* Call Publishing Company, 181 U. S., 92.)

Referring to a quotation from the opinion of Mr. Justice Matthews, in Smith *v.* Alabama (124 U. S., 465–478), as alleged authority for the contention that there is no common law of the United States, and for the purpose of showing that Justice Matthews did not so hold, Justice Brewer, in the case just cited, says:

"But it is an entirely different thing to hold that there is no common law in force generally throughout the United States, and that the countless multitude of interstate commercial transactions are subject to no rules and burdened by no restrictions other than those expressed in the statutes of Congress."

And, further—

"Can it be that the great multitude of interstate commercial transactions are freed from the burdens created by common law, as so defined, and are subject to no rule except that to be found in the statutes of Congress? We are clearly of the opinion that this can not be so, and that the principles of the common law are operative upon all interstate commercial transactions except so far as they are modified by Congressional enactment."

And further in the case:

"But this question is not a new one in this court. In Interstate Commerce Commission *v.* Baltimore and Ohio Railroad (145 U. S., 263, 275), a case which involved interstate commerce, it was said by Mr. Justice Brown, speaking for the court:

"Prior to the enactment of the act of February 4, 1887, to regulate commerce, commonly known as the interstate-commerce act (24 Stat., 379, c. 104), railway traffic in this country was regulated by the principles of common law applicable to common carriers."

In Murray *v.* Chicago & N. W. Ry. Co. (62 Fed. Rep., p. 24, 25), referred to in foregoing opinion, it is held that:

"In determining the obligation assumed by a common carrier engaged in interstate commerce, the court has the right to apply the rules of the common law, unless the same have been changed by competent legislative action; in an action for damages for charging unreasonable rates for transportation from one State to another, shipments made before the adoption of the interstate-commerce act are covered by common law as modified by the act."

And further in the opinion it is said:

"If the theory now contended for by the defendant company be correct (i. e., that there was no common law applicable), then from the foundation of the Government up to April 4, 1887, when the interstate-commerce act took effect, it was open to all the common carriers engaged in foreign or interstate commerce to act as they please in regard to accepting or refusing freights, in regard to the price they might charge, in regard to the care they should exercise, and the speed with which they should transport and deliver the property placed in their charge. What more disastrous restraint upon the true freedom of foreign and interstate commerce could be devised than the adoption of the doctrine that the inaction of Congress left the carriers engaged therein entirely free to accept and transport the property of one man or corporation and to refuse to accept the like property of another, or to transport the products of one locality and to refuse to transport those of another; to charge an onerous toll upon property of one and carry that of his neighbors for nothing?" and after asking and raising these questions the writer of the opinion, Justice Brewer, proceeds to answer them most forcefully to the effect that there is a common law of the United States which includes as one of its principles the obligation of a common carrier to carry, and to carry for all.

In Tiff *v.* Southern Ry. Co. (123 Fed. Rep., 789–791) it is said:

"It has been from time immemorial the basic obligation of a common carrier to receive and transport all goods offered, upon receiving reasonable compensation * * * having undertaken that duty, it was settled by the common law that the common carrier must carry for all to the extent of its capacity without unjust or unreasonable discrimination, either in charges or in the facilities for actual transportation."

And, further:

"If this was true at common law, how much stronger is the obligation upon those vast public corporations of modern times, which, in consideration of valuable franchises granted by the public, are engaged in the stupendous business of transporting

freight and passengers? So universal is the reliance of the public upon these instrumentalities of modern commerce that their operation is indispensable to the very existence of our modern social life."

These citations and quotations are made here for the purpose of showing primarily that the duty rests upon these Michigan railroads to carry the fruit from that territory.

IS THIS DUTY SET OUT IN THE INTERSTATE-COMMERCE ACT?

It is further submitted, that while an express and categorical declaration of this common-law duty may not be found in the provisions of the interstate-commerce act, yet it is true that every provision of the interstate-commerce act dovetails with this common-law duty and is entirely compatible with the assumption that such common-law duty is not in full force and operation side by side with the interstate-commerce act (the act itself is principally one of prohibitions), and it is expressly provided in said act, in section No. 22, that "Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this act are in addition to such remedies," and as we have before quoted from Western Union Telegraph Company v. Call Company, "We are clearly of opinion that the principles of the common law are operative upon all interstate commercial transactions, except so far as they are modified by Congressional enactment."

We start, then, as a guide to the solution of the present question, with the rule, amply made out from the foregoing reasoning and authorities, that it was and is the duty of these Michigan railroads to carry to market the products and all the products offered for shipment at their regular receiving points, and they can not acquit themselves of responsibility by stating that they were unable to furnish all the instrumentalities of carriage.

The interstate-commerce act provides that—

"The term 'transportation' shall include all instrumentalities of shipment or carriage."

What are the instrumentalities of shipment and carriage and what do transportation and carriage involve?

Could language more fully, completely, and clearly evince the intention on the part of Congress to put upon the common carrier the burden of furnishing all necessary equipment for carriage?

And what does the carrying or transporting of a car of peaches from Michigan to Boston in the peach season import?

These words, "transportation," "carriage," "equipment," etc., in the interstate-commerce act are used in a commercial sense, a trade sense, and "transportation" is directly defined as including all instrumentalities of shipment or carriage, and to load a car of peaches into an ordinary box car and move it on wheels from Michigan to Boston is neither to carry that car of peaches or transport it in the sense used in this act. Nor does such car include such instrumentalities of carriage as are in general use on railroads. Everybody knows that a car of peaches moved from Michigan to Boston under the conditions described would on arrival be no longer a car of peaches, but only a car load of decayed vegetable matter.

Society advances—the luxuries of to-day are the necessities of to-morrow. Invention is awake, and constantly finding out things and applying them to the everyday affairs of life, to the general comfort of man. Not many years ago there was no railroad, but there were common carriers, with a common carriers' duty to carry for all, and when the railroad came upon the scene of action and engaged in the work of carrying, instanter with its becoming a common carrier that common-law duty attached to it.

Some years ago there was no refrigerator car, and the resident of Boston could not have the luscious peach of Michigan on his home table to delight his palate, but during the period now under consideration the refrigerator car was in everyday use all over the country; these respondent roads used them, owned a certain number of them and used them, and when and as soon as these refrigerator cars came into general use, instanter it became the duty of these respondent roads to furnish them to its patrons in which to carry these perishable products.

There is only one place to raise a question in this controversy, and the only question that can be raised is whether the refrigerator car is and was, during the time of these practices, in common and general use, and to this question there can be but one answer; and having shown that these railroads are not furnishing or pretending to furnish these refrigerator cars, and are unwarrantably placing exclusively into other hands the furnishing of these cars by contract, complainants have shown themselves entitled to an order directing the respondent roads to cancel these car contracts and to furnish their own equipment.

The respondent roads, by their observance thereof in the past, have recognized their whole duty in the premises. Prior to 1902 they furnished refrigerator cars for this traffic, erected icing stations at convenient points along their roads, equipped themselves for icing these cars, and did so ice them, and collected no charge therefor other than by a higher classification and a higher freight rate. We contend for no more than the return to this practice, but we also contend for no less than that. Refrigerating cars for peaches were in vogue with them when the freight rates were made.

By the beginning of the season of 1902 some cunning evil spirit, with a long head and a minimum of conscience, started the practice of charging extra for icing the cars outside of and beyond the scheduled freight rate; this was but the first step in a preconceived plan in which the practices of 1902 and 1903 and the exclusive contracts of those years are the second, but not by any means the final step. The first step bears the mark of dishonesty on its face; these railroads had previously been conscious of what was the honest course and had pursued it; they knew that they had the means of averaging up and arriving at the transportation cost of refrigerated products and they did so by placing these products in a higher classification, according to well-known and recognized rules of procedure, and when, prior to 1902, they found, as they claim, that they were losing money on that traffic, the natural, accustomed, and honest course for them to have pursued was to advance their schedule rate on peaches, and no other course would have occurred to a mind occupied with the single thought of receiving for a service that which it was fairly worth.

The course the railroads did pursue, we submit, was dishonest and contrary to law, and discredits the truth of the statement that they were losing money on the traffic.

However, this departure was submitted to and greed, always impatient for more, hurried on to take the second step, the entering into these exclusive contracts, to defend which the railroads must prove as a fact, in addition to others not now being discussed, that the refrigerator car is not a carriage in common and general use among common carriers for transporting fruit long distances.

It is common knowledge that such cars are not only in common and general, but also in universal, use for this purpose, and the evidence in this case, including the evidence of the respondent roads themselves, abundantly shows this fact.

Having proved the fact, the law applicable thereto is: That the respondent common carriers must furnish the refrigerator car.

Let us leave the matter of refrigeration to be considered later.

"If the goods are of such a nature as to require for their protection some other style of vehicle than that required for ordinary goods, and vehicles adapted to the necessity are known and in use by carriers, it is the duty of the carrier to provide such vehicles for the carriage of the goods in question."

Hutch, carriers (2d ed.), sec. 295a, Mechem.

A bottom note by the editor (Mechem) to the foregoing text reads: "But see Udell *v.* Railroad Co., 13 Mo. App., 254; Wetzell *v.* Railroad Co., 12 Mo. App., 599."

The first case cited, Udell *v.* Railroad Co. (1883), as far as it goes, sustains the text. It was an action for damages for allowing a carload of cheese to freeze en route to destination, one of the contentions being that the cheese should have been carried in a refrigerator car. The plaintiff recovered, and the recovery was affirmed on appeal, and it was not shown that such cars were in common and general use for this traffic, and in the course of the opinion the court says:

"Briefly, a railway carrier is not, as matter of law, bound to furnish refrigerator cars; but there may be circumstances where it will be unreasonable not to do so; and it was fairly a question for the jury whether such circumstances existed in the present case."

This is not close and accurate language and is at variance with itself. Sure, if "there may be circumstances where it will be unreasonable not" to furnish a refrigerator car, and such circumstances do, in a particular case, so clearly exist as to leave no room for two opinions, then there would necessarily arise, as a matter of law, the duty to furnish a refrigerator car. There would be nothing left for a jury to do on such a showing, but the language of the court was obiter, the case before them was not of that description.

The opinion in the second case, Wetzell *v.* Railroad Co., occupies only four lines, as follows:

"A common carrier who runs a refrigerator car is not, in the absence of an express contract to carry by the refrigerator car, liable for damages to an article carried by it, occasioned by heat during transit."

And the court which disposed of this question in hand in so summary a way, later, in the Udell case (the cheese case), refers to it again in the following connection:

"Secondly, it is urged that the defendant is not liable for the freezing of the *cheese, unless* the freezing was the result of its negligence; that it was not bound to

make extraordinary efforts to prevent it from freezing; and that the plaintiff, by shipping his goods without any special contract for unusual care, when they were or might be exposed to danger from freezing, assumed the risk himself. We do not at all question this proposition of law, when properly applied. Sweetland *v.* Boston, etc., R. Co., 102 Mass., 282. We held the same in substance at the present term in regard to an injury to butter by heating, when it was shipped in hot weather."

These Missouri cases were decided in 1883, twenty-one years ago, when the refrigerator car was much less used than now, and the case referred to from Massachusetts was an action for damages caused by delay in transit.

These cases are mentioned and referred to, not in support of complainant's contention, but to show that they are not at variance with the cited text from Hutchinson on Carriers, nor with complainant's contention.

In Beard & Sons *v.* Ill. Central Ry. Co., 79 Iowa, 518 (decided 1890), which was an action to recover damages for injury sustained in transporting a carload of butter, the defendant had transported the butter in an ordinary box car. It was not shown that plaintiff made any demand for a refrigerator car. The plaintiff recovered a verdict, based on defendant's negligence, and on appeal the court says:

"A carrier's duty is not limited to the transportation of goods delivered for carriage" * * * "the nature of the goods must be considered in determining the carrier's duty" * * * "live animals must have food and water when the distance of transportation demand it." Fruit and some other perishable articles must be carried with expedition and protection from frost. So the carrier must attend to the character of the goods he transports * * * and, if improved cars for the transportation of articles of commerce liable to injury from heat were in use, it was defendant's duty to use such cars in carrying butter."

And the court says further:

"These views are supported by the following, among other cases: (1) Hewett *v.* Ry. Co., 63 Ia., 611; (2) Sager *v.* Ry. Co., 31 Mo., 228; (3) Hawkins *v.* Ry. Co., 18 Mich., 427; (4) Ry. Co. *v.* Pratt, 22 Wall., 123; (5) Wing *v.* Ry. Co., 1 Hilt., 241; (6) Merchants' Despatch & Trans. Co. *v.* Cornforth, 3 Colo., 280.

As to the duty of defendant to use cars so constructed and so as to avoid injury from heat see:

Hutch. Carr., sec. 294; Boscowitz *v.* Express Co., 93 Ill., 525; Steinweg *v.* Rwy. Co., 43 N. Y., 123, 525. See also Wolf *v.* Express Co., 43 Mo., 421 (wine case).

In R. R. Co. *v.* Pratt, 23 Wall., 123, which was an action for damages for loss of a carload of horses by fire, where it appeared that a worn and unfit stock car was used, the court, Huit, justice, says: "The judge * * * might * * * have charged that if the jury found the company to have been negligent and careless in furnishing cars, they would not be relieved from responsibility, although there had been an agreement that they should not be liable therefor."

The custom of shipping carload lots of peaches under refrigeration being shown, it was the duty of the carrier to furnish the refrigerator car and could not refuse to receive the peaches on the ground that it did not have the cars.

People, exrel., *v.* C. & A. R. R. Co., 55 Ill., 95–112. Case raising point about receiving wheat in bulk.

These authorities abundantly verify and sustain the position that the respondent common carriers must furnish the refrigerator car.

The respondent common carriers must provide icing stations at convenient points, and ice the cars.

"The duty of the carrier extends also to the providing of proper and reasonable stational facilities, such as platforms, warehouses, approaches, and the like. * * * For performing this service the carrier can not impose an extra charge, nor authorize nor require some other person or corporation to perform it and insist upon extra compensation." (Hutch. Carr. (2d Ed.), sec. 295d; Covington Stock Yards *v.* Keith, 139 U. S., 128 (1891); McCulloch *v.* Rwy. Co., 34 Mo. App., 23).

In the Keith case the petition proceeded upon the ground of discrimination. The railroad was in the hands of a receiver and was operating under a written agreement not unlike the one at bar, between the railroad company and a stock yards company at Covington, Ky., by the terms of which the railroad company undertook to deliver all cattle coming to Covington through the yards of the Covington Stock Yards Company. The prayer of the petitioner was for a rule against the receiver to show cause why he should not deliver to him at some convenient and suitable place outside of the lots or yards of the said Covington Stock Yards Company, free from other than the customary freight charges for the transportation of all stock owned by or consigned to him and brought over said road to Covington. The stock yards company, under leave, intervened and filed a petition claiming all the rights granted by the agreement referred to, and alleging that it had expended $60,000 in constructing depots, platforms, and chutes as required by that agreement.

In the course of the opinion by Mr. Justice Harlan, it is said:

"The railroad company, holding itself out as a carrier of live stock was under a legal obligation arising out of the nature of its employment to provide suitable and necessary means and facilities for receiving live stock offered to it for shipment over its road and connections, as well as for discharging such stock after it reaches the place to which it is consigned. The vital question in respect to such matters is whether the means and facilities so furnished by the carrier, or by some one in its behalf, are sufficient for the reasonable accommodation of the public."

Further on—

"The contention of the defendant just adverted to is, in effect, that the carrier may, without a special contract for that purpose, require the shipper or consignee, in addition to the customary and legitimate charges for transportation, to compensate it for supplying the means and facilities that must be provided by it in order to meet its obligations to the public. To this proposition we can not give our consent. When animals are offered to a carrier of live stock to be transported, it is its duty to receive them, and that duty can not be efficiently discharged, at least in a town or city, without the aid of yards in which the stock offered for shipment can be received," etc.

The contract with the stock-yard company is held inconsistent with the public duties of the carrier and void.

This language is as apt and as applicable to the matter of an icing station and ice for a refrigerator car as it is to the circumstances and facts to which it is applied in this decision, and it goes the whole length of the proposition that the respondent railroads must furnish the icing stations and the ice in the bunkers, and do so without extra charge therefor, in addition to the customary and legitimate charges for transportation, as the same are fixed and scheduled and filed with the Interstate Commerce Commission.

Further on the court says that "the carrier must at all times be in proper condition both to receive from the shipper and to deliver to the consignee, according to the nature of the property to be transported as well as to the necessities of the respective localities in which it is received and delivered."

The foregoing decision contemplates and assumes that these extra facilities are to be paid for, of course, but the decision indicates and clearly holds that the only admissible way in which this charge can be collected is through a freight rate adjusted by a consideration of such items of extra expense as the maintenance of a stock yard and the other extra services that the handling of live stock entails, and it clearly holds that it is the duty of the carrier to furnish all necessary facilities and equipments used in carriage.

And it is further to be noted that these respondent roads (and with these roads only we have to do) have shown that it is the customary and usual practice, and entirely feasible and practicable, for them to furnish in the future, as they have in the past, icing stations, and to place ice in the bunkers of the cars. They attempt to justify their present practices solely on the fact that they do not own the necessary refrigerator cars. The answer to which is, that it is their duty to provide them.

For all these inquiries, dismiss from the mind "Armour Car Lines." They are not common carriers; so they maintain, and we agree with them, they are not subject to the order or direction of this Commission in a proceeding of this kind; so they maintain and we agree with that; but it also follows that the reasons which the car lines attempt to thrust in here for defenses are not to be considered. It is safe to take it for granted that the respondent roads have presented all their defense, and it is right, proper, and necessary as a rule of procedure for this Commission to consider only the reasons for this practice assigned by the respondent roads themselves.

Armour Car Lines is a volunteer, an intermeddler, and a self-proven outlaw, and an outlaw that, from the viewpoint of safety, has decidedly improved upon Rob Roy's methods.

Armour Car Lines are commercial pirates and—

> "The good old rule
> Sufficeth them, the simple plan,
> That they should take who have the power
> And they should keep who can,"

and the indignation which an honest man feels in contemplating its course is apt to divert one from the real points in this case.

It is to be said here, in passing, that an impression seems to prevail that the railroads are the victims of a mastering influence and are not themselves the culprits, and it seemed at the hearing of this case that the most interested party respondent was not either of the respondent railroads. Be this as it may, we submit that it takes at least two parties to enter into and to execute a conspiracy, and the present

case is no exception to that rule, and one of the conspirators herein, as in the Keith case, is the respondent railroads, and it matters not for the purposes of this hearing how dominant the other conspirator may have been in perfecting this scheme.

However dominant that conspirator may be, the law in its wisdom has provided one way of relief, partial relief, at least, through the provisions of the Interstate Commerce Commission, and when these meek and lowly respondent roads, in obedience to the domination of any third party, violate their public duty as common carriers, and this violation is made out by due proof to the Interstate Commerce Commission, then it is incumbent upon that Commission to say to these meek and lowly carrier culprits: "We command you to desist from these criminal practices and to cancel these criminal contracts. You are the ones whom the law has committed to us the duty of holding in check."

"Sufficient unto the day is the evil thereof." Armour Car Lines can well be left to be looked after at another time and by a different proceeding, and while there was, no doubt, in the wisdom of the Commission some good and sufficent reason for making the Armour Car Lines a party respondent, this complainant can not but feel that any consideration of that party respondent in this connection will tend to cloud the issues in this case.

This complainant claims, upon the foregoing authorities, that these exclusive contracts being admitted and it being admitted that charges for transporting peaches over and beyond the scheduled rates filed with the Commission are being collected, it is incumbent upon the Commission to make an order commanding these respondent roads to cancel these contracts; to furnish refrigerator cars with ice in the bunkers on proper notice from its patrons, collecting no charge therefor, other than at so much per hundredweight as per schedule rate for peaches.

This relief cuts the evil up by the roots and renders it unnecessary to inquire into the detailed discriminative features of the present practices.

These contracts are on their face a violation of the antidiscrimination provisions of the interstate commerce act.

The employment of a common carrier is a public employment, the duty he owes as such is a public duty and can not be delegated. The carriers are responsible for all that may be and for all that is done under these Armour Car Line contracts.

These contracts, on their face, make practicable flexible and varied charges for the service therein agreed upon, and the object of the interstate commerce act would be utterly defeated if any charges for transportations were made that were not scheduled and filed with the Interstate Commerce Commission. We say that because these contracts make varied charges possible and secret brings them directly within the inhibition of the act.

In the case of Vincent *v.* C. & A. R. R. Co., 49 Ill., 33, 39, 43, which was a case in which it was sought to prevent the railroad company from collecting an extra charge of $5 per car on wheat delivered to the plaintiff's elevator in Chicago, it is said: "It would be obviously impossible for the companies to unload and store this grain at their ordinary freight depots, to be there held, unmixed with other grain, subject to the order of the consignee, and without incurring great additional expense, and they would hardly claim the right, under their charters, to erect elevators of their own for the purpose of adding the business of commission merchants to that of common carriers. If they were to do so, the tendency of such a practice to create a dangerous monopoly would soon attract the attention of the legislature and lead to its prohibition." This was said in 1868. Since then the tendency of such practices to create a dangerous monopoly has arrested the attention of the National Legislature and it has, by the provisions of section 3 of the interstate-commerce act, expressly inhibited all such practices as are contemplated on the face of these exclusive contracts, and, according to the doctrine of the Keith case, the provisions of these contracts are equally violative of the common law as applicable to common carriers, even before passage of this act.

Further in the Vincent case, the court says: "As to the right of the company to impose the extra charge of $5 on ground that it is performing additional service, it need only be said that a railway company, although permitted to establish its rates of transportation, must do so without injurious discrimination as regard to individuals. It must deal fairly by the public, and this it would not be doing if allowed to so discriminate as to build up the business of one person to the injury of another in the same trade. It may fix its rate of charges for transporting a bushel of grain from any given station upon its line to Chicago, but, the grain being taken there, it can not charge one rate for delivering it to the elevator of Munn & Scott and another for delivering it at that of appellants. When it takes grain consigned to Chicago its duty is to deliver it in Chicago at any warehouse upon its line or side tracks to which it has been consigned. The object of the Legislature in passing the statute on which we have commented would be utterly defeated if the com-

panies were left at liberty to discriminate at their discretion and in their charges for delivery at different warehouses. That is as much prohibited by the spirit of the law as is the actual delivery to any other person than the consignee, by its letter." So, also, it may be said, the object of the National Legislature in passing the interstate-commerce act would be utterly defeated if the common carriers were allowed to deputize some private individual or company to perform a part of the carrier's public duty.

Observe the particularity with which all the possible items of compensation for public carriage are provided for in the commerce act; rates are spoken of, and fares and charges, and they are all required to be shown in a schedule for public inspection. When this act was passed the Legislature knew that there were accessorial services to be rendered by carriers in transporting some kinds of property. For instance, live stock requires special equipment for and attention in carriage; and fruits require special equipment and attention, and the list might be lengthened, and the charges referred to in the act are designed to cover these things, as distinguished from the rates mentioned in the act, and it is evident that none of these refrigeration charges are scheduled, and these contracts are incompatible with the scheduling of the refrigeration charges, and, therefore, are in the teeth of the act.

Necessarily, by these contracts, Armour car lines dominate the situation and there is in this a direct discrimination against other and connecting carriers, who were shown by the evidence to be ready, willing, and able to furnish refrigerator cars to shippers for the transportation of their fruit.

The commission will not stop to inquire as to the degree of injury inflicted upon the public. It is enough to know that the inevitable tendency of such contracts is injurious to the public.

FEATURES OF THE CAR-LINE CONTRACTS.

These contracts are a left-handed recognition by the respondent roads of their duty to furnish refrigerator cars, for upon no other theory is it possible to defend them, and if the roads claim, as they must, that they do thus furnish the cars, then it is the duty of the railroads to pay for them, and be reimbursed from the freight charged by them to the shipper.

Covington Stock Yards v. *Keith*, *supra*.

Notice the shiftings in the positions of the various respondents as to the nature of these dealings. It was said in the first letters of the respondent roads to the Commission that they had practically nothing to do with these refrigeration charges, and left the impression that they knew nothing of them; again, it is said that the three-fourths of 1 cent mileage provided for in section No. 5 of the Pere Marquette contract pays for the use of the car and that the compensation is fair and ample, and it is admitted by the road's practices that the charge for the use of the car is a charge for the railroad to pay and which, so far as the three-fourths of 1 cent is concerned, the railroad does pay out of the freight rate.

But it also appears that this compensation does not procure the cars and that the car line does not and will not furnish the cars except upon the condition that the railroads enter into the following additional agreements, (first) to use the car line's equipment exclusively, excepting for fruits destined to certain points outside the State of Michigan (see sec. 2 of contract); (second) to give the car line exclusive management of the refrigeration service and to charge therefor as it sees fit, under certain unimportant restrictions, whereby it is permissible to charge one man the maximum and to carry another's product for nothing; (third) to act as a collecting agent for the car lines without compensation (sec. 4); (fourth) to furnish the car line ice in the bunkers at $2 per ton—in other words, to do the refrigerating itself at a stated price; and last, but by no means least:

"And the Pere Marquette also agrees to instruct its (i. e., the car line's) agents by wire from the officers of the Pere Marquette such information as may be requested by the car line's representatives."

What, then, is the consideration paid for the use of the Armour cars?

From the car line standpoint, it is more than three-fourths cent mileage, because the sworn testimony is that the respondent roads could not get the cars from the car line by simply agreeing to pay that sum, and the car line witnesses admit that such was the fact, and no one seemed to think of an increased mileage as an inducement to procure the cars.

From the respondent road's standpoint, it was more than the three-fourths cent mileage, because they expressly say that the only consideration that induced them to enter into these contracts was to get the cars; and therefore they paid for the use

of these cars the engagements in these contracts in addition to the three-fourths cent mileage, and, by the terms of the contract and by the evidence in the case, it clearly appears that the additional engagements went to the extent of doing the actual refrigeration in addition to the other things. This would seem to clearly make out, beyond the peradventure of a doubt, that the consideration paid for the use of the cars was the three-fourths cent mileage, and also all the additional contract covenants entered into by the respondent roads; and, on the authority of the Keith case, we say that the charges to be paid for the cars are to be paid by the respondent roads out of their freight rate, and that they can not collect them from the shipper or consignee as an additional charge.

The contract also provides that "the car line's charges referred to shall be billed as advance charges on each carload and shall be paid to the car line by the accounting department of the Pere Marquette monthly, it being understood that in the event property is refused and sold at destination, through no fault on the part of the railroad companies interested or the car line, the car line will join the railroad companies in prorating on a revenue basis any deficit between the amount of transportation charges and the proceeds of sale that may exist. In case consignees refuse to pay the refrigerator charges, and the agent at the destination is unable to collect the same, the railroad shall be reimbursed for the amounts advanced to the car line."

Note, in passing, that even these parties respondent here designate these refrigerating charges "transportation charges." Nothing could more clearly demonstrate that the parties to these contracts were conscious at the time of making them that they were in violation of the law, and that the contracting parties were engaged in a conspiracy to rob the shipping and receiving public than the last sentence quoted herein.

The first part of the entire quotation proceeds upon the theory that the railroads procure this service from the car line and pay them for it in monthly settlements, regardless of whether payment had already been collected from the shipper or not, and on that theory, the service being rendered, the railroad should pay for it, regardless of what might thereafter happen; but in acknowledgment that they are engaged in a game of robbing and grabbing, contrary to all principles in legitimate contracts, it is provided that while the railroad company may proceed upon the theory that the consignee will submit and pay these charges, that, on the other hand, he might refuse to be robbed, and, in that event, the car line agrees to return to the railroad companies the anticipated spoils, which the railroad paid to them before they were actually in the railroad's hands. Ordinary and common thieves always have the spoils in hand before division is effected, but these drawing-room robbers have so improved upon the methods of the common highwayman that they enter into contracts to deliver the spoils before they are in hand, because they have special privileges granted to them, under public laws, in consideration of their performance of the public duty, and this gives them the additional advantage over ordinary highwaymen.

Some rather general testimony was given designed to convey the impression that the Armour refrigerator cars were superior to other refrigerator cars. They failed utterly in showing such fact, but the topic suggests this thought, which seems worth while considering, that in the event that this clearly disclosed plan and design of eventually placing all refrigerator cars under one management should succeed the entire incentive for improvement in the refrigerator car would be lost, and also the benefit of the improvements in the refrigerator car that would naturally come under the processes of competition.

The claimed superiority of the Armour car was its icing capacity, but no sooner were these exclusive contracts made than Armour's agents were on the ground, pushing secret and "half-icing" contracts under the shippers nose, by the terms of which the shipper is supposed to relieve the respondent road and the car line of the carrier's common law duty to carry safely, and, as an inducement to enter into this half-icing contract, engages to reduce the full refrigeration charge to the shipper to the extent of 10 per cent. Here is an apt illustration of the secret manipulating, shifting, and changing that are open to be made under these irregular practices, and there might still be as many different arrangements and different refrigerating charges as there were parties to make shipment.

It is evidence that the directorate of the car line and of Armour & Co. is practically the same; that Armour & Co. are wide and extensive dealers in all kinds of California fruits, and that they are also dealers in the Michigan fruits. Evidence of this was given by Mr. Murphy, of St. Paul, and by Mr. Meade, of Boston. The icing of these cars in transit is a trust duty to be performed for the shipper and for the consignee, and it is placed by the all-powerful railroad company in the hands of a company that, by one remove only, is a dealer in fruits at the points to which the shipments are made. In other words, the railroad companies have named a trustee to

perform a specific trust that is, by all rules of law, incapacitated for the service, because no man can serve two masters, not even when one of these masters may be himself.

Armour & Co.'s interest as a dealer in the fruits at Duluth would be adverse to the interests of the Duluth consignee, whose refrigerated products Armour & Co. might be caring for, and there are a thousand and one ways in the way of neglecting the consignment in refrigeration or withholding it at an opportune time, or by themselves, through their wire advice, under another clause of the contract, running in a sufficient quantity of fruit to glut the market and cause the competing local consignee a loss upon his consignment. Armour & Co. could well afford to do this, having in hand a general plan and design. The profits on the refrigeration alone would be a reasonable profit on the car to the local dealer, and by these methods Armour & Co. could put the local dealer out of business by simply sacrificing his profits on a few carloads of fruit. Or Armour & Co. might refuse to let a car go, or see that it did not reach a particular destination, when it might be against the interest of Armour as a dealer; but it is vain to extend by illustration the logical and probable practices under these conditions. Can contracts which contemplate and make possible such practices as these be held other than void and against public policy?

DISCLOSURES OF RESPONDENTS.

It is to the written disclosures of the respondents that we must look for a defining of their positions and a setting out of their defense for these practices, and in the disclosure of Armour car lines it is said:

"That the icing and refrigeration charges are made by this respondent, but are not applied by said railroad companies, the said companies' connection therewith being only in the collection thereof for respondent."

The evidence shows that the respondent roads make this charge and this collection possible only by the hold-up process, by giving the car lines an exclusive contract, without which the car lines would be powerless, and while it is true that these charges are fixed by the car lines, and may be manipulated by it in any way that may suit its fancy, yet, when it is made, the charge is a charge of the respondent roads, and they are responsible directly for all that is done in that connection.

It is also stated in this disclosure:

"That it is not true that charges are imposed by respondent, not only for icing or refrigeration, but to cover also the use of the cars."

What has been said in the discussion of these contracts and the contracts themselves and the practices thereunder show conclusively that it is true that these charges are imposed to cover the use of the cars.

There is nothing in the disclosure of the Pere Marquette Railroad beyond the contract itself and the McPherson letter, and in the McPherson letter the first material suggestion is—

"The Pere Marquette Company owns sufficient equipment for the transportation of all fruit shipments between points upon its own system."

This is a tacit confession of its legal duty to provide the equipment, coupled with the claim that such duty is fulfilled by providing equipment for the transportation of all fruit shipments between points upon its own system; but it is admitted, and also proved, that the Pere Marquette is engaged in transporting fruits by traffic agreements with other connecting lines for a continuous carriage to interstate points beyond its system, and its equipment duty is as broad and extended as its traffic arrangements. In the case of Cin., N. O. & Tex. Pac. Railway *v.* Int. Com. Com. (162 U. S., pp. 184), 192, the Georgia Railroad Company's road, unlike the Pere Marquette's, was wholly within the State of Georgia, and it was attempting to defend the collecting of the local rate between two points in Georgia on a continuous haul from Cincinnati, Ohio, and the defense attempted there was of the same nature as that outlined in this part of the McPherson letter, but the court overruled it and says:

"But when the Georgia Railroad Company enters into the carriage of foreign freight by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in other rates and charges, it thereby becomes a part of the continuous line, not made by a consolidation with the foreign companies, but made by an arrangement for the continuous carriage or shipment from one State to another, and thus becomes amenable to the Federal act in respect to such interstate commerce."

We claim, under the authority of this case, that when the Pere Marquette enters into the carriage of freight from Michigan to interstate points, through traffic arrangements with other connecting lines, it thereby becomes a part of a continuous line, and thus becomes amenable to the common law of the United States, one of the leading principles of which is that the common carrier must furnish the equipment.

The McPherson letter and the evidence further discloses that in 1903 only 1,63 carloads of refrigerated fruit were handled in Armour cars, and the evidence show that the season of fruit shipments lasts three months and, taking the respondent' own estimate of one round trip per car per month, 550 cars would do the work They claim that they could safely rely on getting 100 cars from connecting roads leaving 450 cars to be supplied by the Pere Marquette at $1,200 each, or $540,000 Now, leaving out of consideration, as shown by the evidence, that there would be us for these refrigerator cars ten months in the year, as refrigerators, and that the might be used for the two remaining months as ordinary box cars, and averaging thi advanced refrigerator charge from the time of making these contracts at $30 per car which is low, and allowing mileage saved on these 450 cars at $75 per season of thre months, there is an additional outgo for refrigerating of $48,960 and a saving on mile age of $33,750; in all, $81,710.

This is the price paid by the Michigan growers per season on the Pere Marquett Line alone for this sweet privilege of being tied down to an Armour refrigerator car and this sum would pay the interest on the $540,000 necessary to purchase the car at 5 per cent, which would be $27,000, and would leave $53,710 to be laid up annually for a construction fund to replace the worn-out cars. When Armour witnesses sa that the average life of a refrigerator car is six years, they must be understood a speaking in a Pickwickian sense, and certainly on the basis that the cars are in us all the time, but in this supposed case the cars are idle nine months in each year dur ing which there is no wear and tear, and, according to their own testimony, a car s used would last twenty-four years, and the annual $53,710 devoted to the construc tion of refrigerator cars to be used only three months in the year would in a fe years build more refrigerator cars than are now in use in the United States.

The McPherson letter and the evidence further disclose an extra charge for th railroad company's own cars of $2 per ton for icing between points on its own line which includes some extra-state points, and the full Armour charge on its own car for extra-state points beyond its own line, all of which charge and practices ar inadmissible under the law.

The burden of the McPherson letter looks to a defense the same as that attempte to be interposed by the Georgia Railroad in the case last cited, and by the authorit of that case is wholly inadmissible.

In the disclosure of the Michigan Central Railroad there is no disclosure mad beyond the admission of an Armour contract. Their evident policy has been to dis close as little of fact and as little of their position as a matter of law as possible thinking, like the ostrich, that by so doing greater safety may ensue.

A LOCAL SERVICE.

The suggestion cropped out during the hearing, but rather covertly, that thes practices have to do with a purely local service, and in the disclosure of Armour Ca Lines it is stated as one of the objections to jurisdiction, "that the icing and refriger ating of cars is not a matter of interstate commerce." This plea will hardly arres the serious attention of the Commission. It is puerile and does not merit a seriou reply. The traffic is a matter of interstate commerce and the refrigerating is neces sary and ancillary to the traffic and has no independent existence or character of it own. When the Federal Statutes and the common law of the United States apply t the matter of traffic, they apply to and control all that is incident and auxiliary to tha traffic. The respondent roads did not have the effrontery to make this plea, prob ably out of regard to the fact that, whether the services were local or not, the road themselves have been performing them under these Armour contracts.

INEVITABLE TENDENCY OF EXCLUSIVE CONTRACTS.

The question of what is a fair and a just and a reasonable rate in any given case i a very difficult one and one that no court would have the confidence to claim coul be any more than roughly approximated by it with all obtainable evidence befor it, and, with this fact in mind, we quote the following from the Interstate Commerc Commission *v.* Baltimore & Ohio Railroad (145 U. S., 263, 276) in speaking of th practices before the passage of the interstate commerce act:

"These evils ordinarily took the shape of inequality of charges made or of facilitie furnished, and were usually dictated by or tolerated for the promotion of the interest of the officers of the corporation or of the corporation itself, or for the benefit of som favored persons at the expense of others, or of some particular locality or community or of some local trade or commercial connection, or for the destruction or crippling of some rival or hostile line."

At page 277 it is further said:

"We agree, however, with the plaintiff in its contention that a charge may be perfectly reasonable under section 1 and yet may create an unjust discrimination or an unreasonable preference under sections 2 and 3."

And further, page 280:

"If, for example, a railway makes to the public generally a certain rate of freight and to a particular individual residing in the same town a reduced rate for the same class of goods, this may operate as an undue preference, since it enables the favored party to sell his goods at a lower price than his competitors, and may even enable him to obtain a complete monopoly of that business. Even if the same reduced rate be allowed to everyone doing the same amount of business, such discrimination may, if carried too far, operate unjustly upon smaller dealers engaged in the same business and enable the larger ones to drive them out of the market."

Here is the meat of the whole matter. If respondent's contention is correct, and there is no Federal control over this matter, then Armour & Co. through its control of Armour car lines, dominates the whole traffic and may make or mar, as it sees fit, and eventually will be the only buyer of the fruits at the primary market and the only seller thereof to the consumer. The plan is absolutely sufficient to effect this result, and all that remains is time to work out the details. This Michigan practice is but a small factor in the general design of controlling and handling all the food products of the United States by one single management.

If it is true that existing law is not equal to this emergency and does not inhibit the plain and palpable execution of this design, what a reproach such a reflection is upon the intelligence of the American people and the honesty and integrity of its lawmakers. But we submit that the Michigan fruit grower and the dealers in those products all over the country are in no such helpless condition under existing laws, and that these car-line contracts are against public policy and as effectually inhibited both by the common law of the United States and by the interstate-commerce statutes as are the pooling contracts described in section 6 of the interstate-commerce act. These contracts and these practices are absolutely incompatible with the common law of carriers, which is operative side by side with the interstate-commerce act; incompatible with the schedule provisions of section 6 of the interstate-commerce act; incompatible with the provisions of section 10 the act; incompatible with sections 2 and 3 of the act; and incompatible with all that "breathes from the pores of the act" as a whole; and there is left no loophole for escape through this door of private and unscheduled contracts and charges.

Whatsoever plea may be put forward for these practices, their inevitable tendency is monopoly by means of discrimination, and such, it must be concluded, is the design and purpose of the parties to these exclusive contracts, whatever other reason may be assigned therefor. We protest against this miserable railroad plea of inability to get the cars, and this suggestion of a domination of the railroads. They are in no sense the victims of an overriding necessity, but are the aiders and abettors in these practices for a sinister purpose. The common practice so far has been for the roads to furnish the refrigerator equipment, and this practice now under inquiry, though growing, is still the exception and not the rule, and can only obtain where the railroad is equally anxious to enter into such a contract as is the other contracting party. The mere existence of such a contract and the power of manipulation of the private-car lines by means thereof constitutes a menace to the freedom of commerce, which it is the design of the laws to protect, and the inevitable result of the working out of these contracts is a monopoly of an important part of interstate commerce. Can we stop to inquire and to receive evidence as to the motive with which such a contract is entered into, where it appears that the necessary tendency of the contract in its workings is discrimination and a monopolizing and controlling of the trade; or, in other words, can any other motive be ascribed to the parties entering into the contract, except such motives as are in keeping with the necessary tendencies of the contract?

The Commission should not stop to inquire as to the degree of the unjust charges and discrimination practiced under these contracts; but the evidence shows discriminations in a number of instances, and, further, that the charges are from 300 per cent to 500 per cent higher than the railroads themselves had charged, even after they had resorted to the unwarrantable practice of making extra charges for the ice, over and above their freight rate. It is enough to know that the inevitable tendency of such contracts is discrimination and monopoly, because these contracts place the whole matter in a private car line's hands for manipulation, and place it in the car line's power to levy excessive charges for these services, to discriminate and to monopolize the trade, and that, without such affirmative action by the railroads, the car lines would not have this power, and that by so doing the railroads aid and abet in the violation of sections 1, 2, and 3 of the act, and by so doing directly violate the

provisions of section 10 of the act. The railroads actually agreed to instruct Armour car line's agents by wire and give them all such information as may be called for by the car line's representative. The contract ought to have had a preamble to the effect that, whereas it is the purpose of Armour & Co. to become the exclusive buyers and sellers of the fruits raised in Michigan; and whereas the respondent roads stand ready and willing to aid and abet therein, now, therefore, in consideration of one dollar, etc., we, the respondent roads, agree, etc.; and here follow the engagements which the railroads have entered into with Armour Car Lines in these exclusive contracts.

I have dwelt upon what these contracts show on their face, and the potential infractions of the laws thereunder, coupled with the inevitable tendencies of these contracts, leaving the actual infractions and violations of the law, as shown by the evidence, to the independent consideration of the Commission, who will have a copy of this evidence before them. A discussion of these would involve a rehashing of the testimony and would be too lengthy for discussion in a brief.

I do not dwell upon the preference or advantages shown by the testimony to have been given to particular persons as, for instance, Moseley Brothers, or other persons, under the half-icing contracts, or such advantages to particular localities as, for instance, Grand Rapids, and the subjecting of this particular description of traffic to undue and unreasonable disadvantages. The evidence, both that on the face of the contract and the oral evidence, shows a multitude of such infractions of the law, but a discussion of them would involve a discussion of the evidence and, besides, they are but outcroppings. What we ask for will at one stroke wipe out all these practices.

We submit that on the foregoing authorities the complaining public have shown themselves entitled to an order by the Interstate Commerce Commission, addressed to these respondent railroads, directing them, first, to cancel these exclusive car line contracts; second, to supply themselves with refrigerator cars sufficient to move with reasonable promptness the fruit from points in the Michigan fruit belt touched by their roads, and to supply and to furnish the initial icings for such cars, collecting for said services no extra charge other than that allowed for and provided for in the higher classification of these fruit products in the schedule of rates, which these roads are required to file, and have filed, with the Interstate Commerce Commission.

The present scheduled rate may or may not be high enough; the evidence to the effect that it is not high enough is by no means convincing, but no complaint is made for collecting that rate; but any collection over and beyond that rate, whether it be $1 or $45 to Duluth, or $1 or $55 to Boston, we submit is, under the law, absolutely inadmissible.

All of which is respectfully submitted, on behalf of the complaining public, by Knudsen-Ferguson Fruit Company, one of the victims of the practices.

_____,

Attorney for Knudsen-Ferguson Fruit Co.

Dated June 15, A. D. 1904.

AVERAGE MILEAGE OF REFRIGERATOR CARS.

The tax returns of various State records contain more or less data on the average mileage per car, per day or per year. The Iowa report of the Cudahy Milwaukee Refrigerator Line gave the yearly mileage of that company's refrigerator cars at 20,232 miles, which is equivalent to about 55 miles per day.

A report of the Cold Blast Transportation Company (owned by the Schwarzschild & Sulzberger Company) to the State of Iowa gave the yearly mileage per car of that company's refrigerator cars at 32,534 miles, which is equivalent to about 90 miles per day.

The National Car Line Company reported to the Iowa authorities that the average mileage of its refrigerator cars in 1903 was 300 miles per day, and of box cars 150 miles per day.

The Provision Dealers' Despatch Line reported to Iowa an average mileage of 300 miles per day for its refrigerator cars and an average of 200 miles per day for its tank cars.

There can be little doubt that the figures for the two companies last mentioned are grossly exaggerated. It is obviously a temptation to car-line companies, in reporting to State authorities for purposes of taxation, to make the daily mileage per car as high as possible, thus reducing the number of cars required to perform a given mileage in the State—the value of the cars being the basis of taxation in most cases.

The following table shows the indicated average mileage traveled by cars of various private car lines in 1903, as computed from returns to various States for purposes of taxation:

	Daily mileage.
Armour Car Lines:	
Refrigerator cars	87
Fruit cars	88
Swift & Co	[a]373
National Car Line Company:	
Refrigerator cars	300
Box cars	150
Provision Dealers' Despatch	300
Nelson Morris & Co	57
Cudahy Packing Co	105
Cudahy Milwaukee Refrigerator Line	55
Schwarzschild & Sulzberger (Cold Blast Transportation Company)	90

DIGEST OF TESTIMONY BY REPRESENTATIVES OF VARIOUS PRIVATE-CAR LINES AT A HEARING BEFORE THE STATE BOARD OF ASSESSORS OF MICHIGAN, SITTING AS A BOARD OF REVIEW AT LANSING, MICH., ON JANUARY 18, 1904, TO FEBRUARY 15, 1904.

Mr. CHARLES G. WILSON, representing the Armour Car Lines and Continental Fruit Express, in his testimony, maintained that 200 miles a day was a fair average daily mileage for refrigerator cars in the State of Michigan. He said that a large percentage of through cars traveled at 350 to 400 miles a day, this allowing for delayed trains. By his average of 200 miles a day he meant that "that included local, through, and cars howsoever used." For the Continental Fruit Express he claimed 225 miles per day, because those cars were unidentified with any local business, and he put them 25 miles a day higher than the Armour Car Lines equipment.

Mr. Wilson noted that the State of Colorado allowed the Armour Car Lines a mileage of 200 miles a day, and that the State of Iowa allowed 90 miles a day on strictly local business.

Cost of cars.—Mr. Wilson testified that certain fruit cars assessed by the State of Michigan at $500 were not worth more than $450. He said the car in question had been in service about six or seven years and that it could not be sold for more than $450. The standard refrigerator car, he said, cost about $100 to $150 more than a fruit car.

Conceding that the car which Mr. Wilson mentioned had been in service seven years, and allowing 6 per cent annual depreciation (the allowance provided for by the Master Car Builders' Association), the car at that time would be worth 58 per cent of the original cost.[b] The value, as just stated, is given by Mr. Wilson as $450. If this was 58 per cent of the value of the original cost, that cost would be practically $776. This was a fruit car. Adding $100 to $150, as Mr. Wilson contended should be done, the value of a standard refrigerator car would be from $876 to $926. If the car in question had been in use only six years, the value, less six years' depreciation, would be 64 per cent of the cost. This would indicate an original cost of $700. On this basis the cost of a standard refrigerator car (at the time these cars were built) should have been about $800 to $850.

Mr. HENRY VEEDER, representing the Swift Refrigerator Transportation Company, maintained that the average mileage of cars going across the State of Michigan—this is through mileage on fast schedules—was 431½ miles per day for the Swift Refrigerator Transportation Company. Allowing that about 13½ per cent of the cars entering Michigan were engaged in local business or transporting products consigned to points in that State, he arrived at an average daily mileage for all cars of 397 miles per day for the State of Michigan. This was for the Swift Refrigerator Transportation Company. He reported the average mileage of Libby, McNeil & Libby at 420 miles per day, that concern having practically no local business.

Mr. Veeder said that cars to New York would not make a round trip in less than ten to twelve days. He evidently meant from Chicago. The round trip to New York is about 1,800 miles. On the basis of ten days this would be 180 miles per

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[a] This apparent mileage for Swift & Co. is obtained by dividing the total car mileage in the State of Iowa by the number of cars reported by the Swift Refrigerator Transportation Company as required to perform this Iowa mileage.

[b] This assumes that depreciation is always figured on the original cost.

day; on the basis of twelve days, 150 miles per day. This apparently makes no allowance for idleness of cars.

Cost of cars.—Mr. Veeder (representing the Swift interests) also stated that the average value of the refrigerator cars of the Swift Refrigerator Transporation Company in 1903 was $596. The average cost, he said, ranged all the way from $600 to $1,000. (NOTE.—He mentioned no higher figure than $1,000.)

Mr. W. S. BAKER, representing among other companies the Cold Blast Transportation Company, gave the average mileage of cars of that concern at 366 miles per day, "as near as we can estimate it." He gave the average value of the company's refrigerator cars at $295.25. These cars, he said, were 10 years old. Under the Master Car Builders' rules, therefore, they would be worth only 40 per cent of their original cost. This would indicate an original cost of $738 per car.

Mr. KAY WOOD, representing the National Car Line Company, which is owned by the National Packing Company, said that "an average of 350 miles a day wouldn't be too much for these cars. I mean a day of twenty-four hours." This statement referred to refrigerator cars in the export beef trade. He mentioned a train of refrigerator cars which left Niles at 12.10 a. m., and arrived at Detroit at 9, thus making a distance of over 200 miles in eight hours and forty minutes, and added that "for a day of twenty-four hours an accurate calculation would show in the neighborhood of 400 miles a day for that train."

Referring to refrigerator cars in the dressed beef trade, Mr. Wood made the following interesting statement:

"The railroads have made special arrangements and put on special trains, which are trains of refrigerator cars and not mixed cars, but refrigerator cars with powerful engines especially adapted for the purpose of hauling that beef to its destination."

Mr. C. J. MILES, at same hearing, representing Streets' Western Stable Car Lines, stated that his company "received and got the same schedules on through business from Chicago to seabord ports as export dressed beef does." After allowing for detentions and delays and a slower return movement of empty cars he said, addressing the board: "I assure you, gentlemen, in placing the general average performance at 200 miles we have conceded everything that would be fair to this board, or any board similarly constituted." Mr. Miles gave the value of his cars at that time at $250, and the first cost at about $500.

Mr. Miles gave the total mileage of his system at 131,238,161 miles, this including Canada and Mexico, as well as United States.

Mr. THOMAS CREIGH, representing the Cudahy Packing Company, stated to the board: "In my house the car people told me that the average mileage through Michigan would be 20 miles an hour for twenty-four hours." He made some calculations in his statement which he contended showed that "the mileage per day is certainly 425 miles. This was the mileage of through cars in Michigan.

[Circular letter No. 37.]

RESUMPTION OF INQUIRY INTO THE GROWTH, DEVELOPMENT, AND OPERATION OF PRIVATE CARS—OPPORTUNE TIME TO SUBJECT THEM TO PER DIEM RULES—THE RATES WHICH SHOULD GOVERN.

CHICAGO, *January 17, 1905.*

To Members:

Circular letter No. 35, dated September 23, 1904, was intended to conclude the series pertaining to the operations of private cars, and was announced as the closing chapter. It had been arranged to open, with my testimony, the investigation which the Interstate Commerce Commission had ordered into the conduct (or, more properly speaking, misconduct) of private cars, particularly those which are controlled by large shippers; but the evidence then taken (although imperfectly and in some respects incorrectly reported) attracted such wide attention as to assume features of national importance. I had written to the President October 15 and urged him to incorporate in his forthcoming message to Congress a recommendation that private-car companies be placed under the jurisdiction of the Interstate Commerce Commission to the same extent that railroad corporations are presumed to be. That was the primal cause of the subsequent declaration in the President's now famous message that "the abuses of the private car and private terminal track must be stopped." No previous message contained an indictment of private cars, nor have I been able to locate any mention of the subject in a similar communication from the Chief Executive.

Moreover, the President made the demand for restraining action against private-car abuses, etc., the paramount issue, beginning the paragraph referring thereto with the positive assertion that "above all else, we must strive to keep the highways of commerce open to all on equal terms," etc. Such equality those familiar with railroad affairs know is impossible so long as shipping owners of private cars are permitted to continue unchecked their unjust and despotic sway. The appalling facts were plainly recited in my letter of October 15 to the President, and he grasped the same with that readiness which is characteristic of him, and was led to demand that abuses I had exposed during the past two years "must be stopped."

Afterwards I received cordial invitations to appear at the White House with the view of explaining more fully regarding the evils complained of than could be done by letter, but when I responded, December 10, the President was so overrun with callers that he was obliged to ask me to put in writing what I wished him to do, so he could refer to it at convenience. In reporting the circumstance last described to supporters, which was done by confidential letter dated December 16, the following language was employed:

"It is no longer a question of getting to the President, his ear having been obtained, with the voluntary request—which he earnestly repeated—that I would advise him fully and directly in writing."

As the demand for railroad legislation took on a much wider scope than was contemplated, it seemed expedient in the aforesaid letter to remark that "my communications with the President referred solely to private-car abuses;" at the same time I called special attention to the deep import of the declaration that certain acknowledged evils "must be stopped," and urged that it be not underestimated. I had been assured by gentlemen upon whom the President relies that he was "deeply in earnest," and such statement was confirmed by a letter received from his secretary, dated December 22, which contained this assertion: "The matter you are interested in is receiving the President's earnest consideration."

The matter I am interested in is that of private-car reform. I have had no part in the proposed inclusion of other questions—such as enlarging the powers of the Interstate Commerce Commission. It is, however, important that the seriousness of the situation be appreciated. On this point the following is apropos from my letter of December 16:

"I am afraid that certain parties do not fully appreciate the gravity of the situation. They are apt to repeat the mistake committed twenty-five and thirty years ago in relation to the so-called Granger movement. That was clearly foreseen by many, but others refused to bend to the threatened storm. It bids fair to be the same in this instance unless parties discreetly recognize the inevitable. No other subject before the American people is bound to command such earnest attention as the correction of railroad abuses, and the most vicious, inexcusable, and indefensible are those growing out of the enforced use of private cars and theo utrageous allowances made to 'industrial roads.' If leading managers do not address themselves resolutely and promptly to the correction of the abuses described, they will only have themselves to blame for the consequences which will surely befall."

After referring in the aforesaid letter to the avidity with which editors of leading magazines were calling for articles on this absorbing topic, which they regard as certain to become "the most engrossing subject of popular discussion, and that it will increase instead of diminish in interest," the following recommendation was made, to which I again invite careful attention:

"My advice would be to put in effect, without needless delay, per diem rates of fifty (50) cents for refrigerators and thirty (30) cents for private stock cars, and I stand ready, on request of or assurances of support from a sufficient number, to convene the interested roads in either section—East or West—to meet for that purpose, and am persuaded that an honest effort on the part of the railroads to inaugurate the foregoing reform would do more to avert threatened trouble than any other course which could be pursued."

Those who have watched the agitation for private-car reform begun by the undersigned nearly three years ago will credit me with sincerity in saying that much of what has lately transpired was predicted. I stated to prominent railroad officers early last year that if I should impart, under oath, a tithe of my experience in relation to private cars, the disclosures would be likely to attract attention throughout the country. They replied that I could not make further exposures than had been contained in my circular letters issued the past two years; whereupon I remarked that those had reached only the railroad profession, whereas if I should testify unreservedly and the salient points be given to the press they would be published in leading dailies and thereby become generally known. The result, I foresaw, would be a storm of indignation that iniquities so gross should exist under an administration pledged to suppress manifest wrong and assure fair treatment to all. I desired

to avoid such disclosures, believing them to be unnecessary, but at the same time informed parties immediately concerned, that rather than submit to defeat I would exhaust every resource at command, and intimated that an authority was available which no wrongdowers, however powerful, could successfully resist. By that was meant Federal authority, which has since been invoked in protection of those who have long cried in vain for relief. Before turning to assistance as above, I plead verbally and by letter with railroad officers to start the private-car reform, however mildly, and thereby show a willingness to correct evils which every sincere man admitted were grievous and unjustifiable.

It is expedient to repeat and emphasize the order of events lest credit for results which can now be clearly foreseen should be given—as so often is done—to parties not justly entitled thereto. Beginning with their third annual report, dated December 1, 1889, and frequently thereafter, the Interstate Commerce Commission, in reporting to Congress, set forth the evils growing out of the employment by common carriers of cars owned by private companies, and recommended remedial legislation. Little attention was paid thereto, and when an order was subsequently made calling for detailed information regarding the operation of private cars, parties controlling the same denied the authority of the Commission. They consented, however, to give information for the guidance of that body, but intimated their purpose to discontinue reporting, should the data furnished be imparted to others. Furthermore, investigation by the Commission of discriminations resulting from the use of private cars did not evoke widespread interest or noticeably improve matters so far as the public or the railroads were concerned.

Meanwhile, owners of refrigerator cars had grown abnormally great, and were disposed to exercise their power solely from the standpoint of self-interest. Eventually, submission to the abject condition described became so general that when I began to agitate the subject three years ago no one in railroad circles would range himself on my side or openly assist in the work I was, nevertheless, urged to undertake. As the result of my endeavors—exemplified in the circular and other letters written in exposure of the operation of private cars, also through contact with executive officers in different cities—an unprecedented interest in the question was aroused. This, however, was confined to railroad men, few, if any, others being cognizant of the movement we had started. It was not until my testimony was given at the investigation held in the United States court room, in Chicago, October 10, 1904—report of which was circulated by the Associated Press—that the people awoke to a realization of practices in this age of progress and freedom which were worthy of the days of feudalism.

In confirmation of the foregoing, it should suffice to cite the indifference with which the testimony of a Boston fruit shipper, given before the Interstate Commerce Commission in Chicago last June, was regarded by the public, and the sensation that a repetition of those statements by the same party before the House Committee on Interstate Commerce at Washington last week is reported to have created.

Mark the radical change which in this respect has occurred. Heretofore, railroad men spoke of these matters with bated breath and behind closed doors. They would not meet openly to consider measures of reform, lest shippers who control the cars in which they insist that their products shall be carried should vindictively boycott the offending roads. That day has either passed or is rapidly passing, and now there need be no reluctance to administer the required correction. When the President says that "private-car abuses must be stopped" such language can have only one meaning—namely, that they are manifestly illegal. If it were not so and they were proper and legitimate there would be no need to discontinue them. The cry of "stop thief!" can not be raised against one who is quietly pursuing his honest vocation. It can only be appropriately applied to those who are running away with something that does not rightfully belong to them. It is not, therefore, necessary to await an order of the Interstate Commerce Commission or a decree of court before taking action. That ought to be done immediately by the railroads in the territory most affected; that is, wherein the transportation of perishable freight and of cattle preponderates. In the opinion just stated I am not alone. The president of a large and successful railroad wrote me last October:

"I can not understand why the railroads do not all want to produce a different basis of pay for private cars; and it seems to me that it is much better to try to bring about this reform by the individuals of the railroads rather than let the Commerce Commission have the credit for it."

Would anyone have thought it possible six months ago that the head of a great railroad would have had the courage to say, as did the chairman of the board of directors of the Chicago, Milwaukee and St. Paul Railway, in an interview which appeared in a New York paper January 6, "that private cars are an evil, and that

the company owning its private cars demands and receives advantages that the railroads are compelled to allow?"

Witness also the following, which, among other statements credited to railroad officers who were interviewed in Chicago, January 10, is reported by a morning paper to have emanated from a railroad president:

"If these private cars are to be continued in operation, they should be made amenable to the law of common carriers. At present they are neither one thing nor the other. I would like to see them all done away with."

The article, after giving other expressions in line with those just quoted, concludes as follows:

"Railway men in general feel that with all the troubles over the payment of rebates and proposed legislation they have enough to bear, without being saddled with the alleged misdoings of concerns owning private cars. The public is holding them responsible, they say, for something they have nothing to do with in the management of private cars, and a system which has grown up from a small beginning until it is now a dominating factor in many lines of traffic ought to be radically changed, if not wiped out altogether."

Credit is due to the Interstate Commerce Commission for the bolder attitude of those who have suffered from the intolerable oppression of private car lines. This was probably traceable to the investigation of charges for the transportation and refrigeration of fruit shipments from points in Michigan, conducted by the Commission in Chicago, June 2, 3, and 4, 1904. The developments as to the charges for refrigeration and the monopoly of the transportation of fruit from western Michigan by the car line named were such as to elicit a report which expressed the opinion that the charges ought to be reduced, and that it was the duty of the interested railroads to insist upon a reduction.

Fruit shippers were not satisfied with the outcome. They felt sorely aggrieved, and were so outspoken in their complaints of unjust discriminations that they demanded those should be stopped by Federal authority. Their outcries were renewed at the subsequent hearing in Chicago last October, and were voiced so generally in the press that the attention of Congress has been drawn thereto. A leading complainant appeared before the House Committee on Interstate Commerce, in Washington, January 9, and gave testimony which would seem almost incredible. Although many will have noted the testimony of George F. Mead, a member of the Boston Meat and Produce Exchange, given before the said committee, it will not be amiss to quote the following extracts as they appeared in the Chicago Tribune of January 10.

"He referred to the fact that Armour, Swift, and other big packers had of late gone into the fruit and produce business, and he gave abundant instances from his personal experience to show that the packers rapidly were securing absolute control of the commission business of the country; that they were able by illegal methods to stifle competition, and that private car lines had an improper and unholy alliance with railroad companies.

"Out of his personal experience the witness showed that in 1900 the price for icing a car of peaches from Michigan to Boston was $20. Then, the Armour Company secured an exclusive contract for doing all the icing on the Pere Marquette Railroad. The Armours immediately put the price up to $33 and finally to $70. According to the witness, Armour & Co. proceeded to buy up practically all the peaches in Michigan at their own figures, because they found it convenient to refuse cars to other shippers or to be unable to ice anything along the line of the Pere Marquette Railroad until after the fruit had rotted, thus forcing all competitors out of that field entirely.

"The witness said there were exclusive contracts between the refrigerator car line and the railroads which bound the railroad company to notify Armour and other owners of private car lines of all intended shipments of similar products, no matter by whom. The result was, in several cases, that when an independent shipper got off a carload of fruit, which arrived at Worcester, Mass., say, on Wednesday, he found the Armour combination, having been notified in advance by the railroad and having the means to expedite its own shipment, had flooded the Worcester market with fruit on Monday or Tuesday, so the independent shipper found absolutely no buyers for his carload, and was obliged to sacrifice it or throw it away entirely."

Railroad companies can not afford to be parties to transactions as above described. It behooves them, without loss of time, to divorce themselves from alliances which not only a suffering witness but an outraged public would rightly denominate "unholy."

If evidence cumulative of the foregoing were needed, it was supplied at the convention of the National League of Commission Merchants—which began its session

in New Orleans, January 11—in the annual report of President Charles B. Ayers, one paragraph from which was given to the press as follows:

"We have instituted a fight against one of the most unrelenting and unscrupulous monopolies of the age, a corporation that terrorizes the railroads of our land and even says to the public: 'If perchance you are not satisfied to pay our toll for the privilege of living you can let your goods rot, as you must do business with us or quit.'"

In answer, certain carriers may say they are at the mercy of private car lines, not being equipped with sufficient refrigerators to care for perishable freight which, during a "rush" season, originates along their lines and is not a constant traffic. The solution is to form an equipment company to be controlled by the railroads; but such an organization can not be made so long as private car lines are permitted to reap abnormal profits. The allowances paid to private car lines should be promptly reduced; in fact, there is no longer an excuse for hesitation or delay. The abuses complained of, which the President declares "must be stopped," could not flourish if allowances for the use of shippers' cars were limited to a reasonable basis. The succeeding step should be to lower the charges for icing or refrigeration to fair figures. Such services were formerly rendered (and can be procured) at prices much below those now in vogue; and it is in the power of the railroads to insist upon a return to proper tariffs. As a matter of fact, railroad companies ought to furnish the equipment necessary to move the products which originate along their respective lines, and the outcome of the presentagitation (if not anticipated in ways I have repeatedly advised) is likely to result in legislation to that effect.

It will be admitted that individual companies could not well afford to acquire the necessary rolling stock to move occasional business during what might be termed "rush" seasons. This would apply to shipments of range cattle, fruit from Michigan, grapes from New York and Ohio, which cases are cited as illustrations, but those emergencies could be admirably met by an equipment company to be controlled by the railroads. Such company would supply special cars on fair terms, and thus place them equally at the command of all shippers. In that event charges for refrigeration would be included in the freight tariffs, as they ought to be, and were until private car lines observed the opportunity to profit abnormally by changing the rule to suit their selfish purposes.

The first step toward a reform, as above, would be to subject all refrigerator and private stock cars to reasonable per diem rates. That brings us to a consideration of what the latter should be.

A prominent railroad president recently wrote suggesting that the per diem rates I had advocated (50 cents for refrigerators and 30 cents for stock cars) were too high. His statement was—

"In view of the fact that a modern box car costs three-fourths as much as a refrigerator car, we certainly ought not make any such rate as 50 cents for refrigerator cars. Stock cars should not have a higher rate than our box cars. I should say 30 cents is high for refrigerators."

Anent the foregoing, it is well to refer to replies elicited by the car service committee of the American Railway Association, published with the proceedings of the convention held last October. They were in response to question as below:

"Do you favor a separate and higher rate for refrigerator cars than on other classes of cars? If so, what rate do you suggest?"

Some of the answers are very interesting and confirm the statement before made, that railroad managers are beginning to express themselves with freedom respecting the operations of private cars. The reply of the New York Central was so completely in line with contentions I have urged in meetings and by circular letter that it is with much pleasure quoted, as follows:

"If all refrigerator cars, including those belonging to private companies, could be brought under the per diem agreement, I would be in favor of allowing them a higher per diem rate than other cars and would suggest 50 cents per day, such rate to be made with the understanding that it is experimental and subject to revision if found to be inequitable."

As Mr. Arthur Hale, the efficient chairman of the car service committee, doubtless had access to the replies when he wrote his "comments on the per diem rules," (Railroad Gazette, October 14 and 21, 1904) we herewith reproduce his reflection on the operation of rule 16 of the per diem code, which excludes private cars:

"No one claims that railroads when dealing with parties not railroads should agree with each other as to the prices they should pay. We find no one designating a uniform rate to be paid private parties for the lease or purchase of steel rails, locomotives, or real estate. There is a consensus of opinion that, as between railroads, a uniform rate should be in effect, and that a per diem rate; but exactly why all rail-

roads should pay private parties and corporations the same price for box, stock, refrigerator, and gondola cars is not evident. Very possibly too much is now paid for certain cars, but that does not prove that the present per diem rate ought to be extended to all private equipment.

"This rule has, however, had one unfortunate result. A prominent railroad has transferred all its refrigerator cars to a so-called private car company and is charging a mileage rate for them. This has caused a good deal of dissatisfaction and has elicited threats of similar action by other railroads; but when it has been seriously proposed to meet this action by increasing the per diem on refrigerator cars to a paying basis, say 40 cents a day, there has been no general acquiescence among the railroads, although it has been hoped that if such an arrangement were adopted it might result in putting all refrigerator cars, railroad and private, on one basis.

"There is one practical difficulty in the way of paying per diem on private cars. In case such cars are not needed for business the railroad on which they are held will object to paying per diem for them; and most of the owners of private cars have no tracks sufficient to hold them when they are not in use."

The last-stated difficulty would not seem to be insuperable. Private car companies, under the mileage basis, receive no compensation for their equipment when it does not move. Why, then, should they be paid for idle time not chargeable to carriers if the per diem method were substituted? When cars are not in use by the railroad and the latter would be debarred from moving them—through their being held for loading, unloading, icing, or otherwise kept standing—while thus delayed they should be free from charge to railroads.

An equipment company organized on the lines I have invariably advocated would solve that problem most satisfactorily. It would have home stations; in fact, cars would be at home upon the tracks of roads that would constitute the said company.

Careful consideration of the circumstances involved satisfy me that a rate of 50 cents per car per day for all refrigerators, whether of private or railroad ownership, and of 30 cents per car per day for private stock cars could safely be inaugurated, and that it would be expedient to make the trial as soon as possible. I admit that it would be inconsistent to allow 30 cents for a private stock car when a much more valuable high-capacity box car belonging to a railroad is exchanged at 20 cents per day, but it should be borne in mind that the prevailing per diem rate was a compromise, and by many, especially in the West, has never been thought sufficiently high. The best arrangement—the one most capable of defense—would be to establish variable rates on the basis of 30 cents for the standard car of 60,000 pounds capacity. That would be quite practicable if per diem accounts should be settled through a clearing house, as was originally contemplated.

The proposed allowance of 50 cents per day for all refrigerators is an eminently just one. It would considerably reduce the payments for private cars engaged in the transportation of dressed beef, fruit, dairy, and other perishable freight in the territory wherein those shipments preponderate, and at the same time would increase the compensation derived by railroad companies for the use of their similar equipment.

A mistake presumably made by those who advocate a lower rate for refrigerators is that 50 cents per day would insure to owners approximately $15 per month. That could only be on the assumption that the cars would be constantly employed, whereas payments would be restricted to the time when the cars were under control of the carrier—that is, were subject to movement. For example, per diem would not be paid for dressed-beef cars while the latter were being loaded or unloaded or otherwise held at the convenience of shippers and beyond control of the carriers. The reasonable presumption is that refrigerators would not average more than $10 or $12 per month. The controlling element in the case would be the disposition to act fairly and intelligently.

After an experience of one year or more under normal conditions it would be practicable to determine whether 50 cents for refrigerators would be fair to owners or not, and if it should appear that a reduction ought to be made the price could be lowered; indeed, having once demonstrated the ability of the railroads to determine the extent and character of the allowances for refrigerator cars it would be competent for the managers, at discretion, to increase or reduce the rate.

Confirmatory of the acceptability of the per diem rates advocated (50 cents for refrigerators and 30 cents for stock cars) I may say that when arguments in favor thereof were, on the suggestion of executive officers of transcontinental lines, made by the undersigned last year and vote thereon was requested, affirmative responses were received from the Canadian Pacific, Northern Pacific, Great Northern, Burlington system, Union Pacific, Atchison, Topeka and Santa Fe, Illinois Central, St. Louis and Santa Fe, Missouri Pacific, St. Louis and Iron Mountain, International and Great Northern, Texas and Pacific, Denver and Rio Grande, and Wabash. The

Southern Pacific dissented because the rate proposed would oblige the company to pay more than it now does for refrigerators, the allowances west of Ogden and El Paso on the Southern Pacific, also west of Albuquerque on the Santa Fe, being three-fourths of a cent per mile for cars when loaded, no account being taken of empty cars.

It is true that large interests, for good and sufficient reasons from their standpoint, deem the per diem rates I have suggested too high, and contend that 40 cents per day should be the maximum for refrigerators, and that no more should be allowed for private stock cars than prevails in the exchange of railroad equipment, but it should be borne in mind that a proposal to fix the maximum allowances for refrigerators at 75 cents per day and for stock cars at 40 cents per day failed of adoption by the controlling lines east of the Mississippi River to the seaboard after laborious efforts put forth with the executive officers in that territory for over a year. The conclusion is therefore forced upon me that the compromise I have indicated is essential to begin the reform.

When it became known that transcontinental lines were almost unanimously in favor of the per diem rates named, I was informed by the President of a line that extends from Chicago to New York that if the plan described should be inaugurated in the West it would certainly be adopted in the East, and he offered to cooperate to that end. As the records hereinbefore quoted show the New York Central to be in favor of 50 cents per car per day for all refrigerators, it should be apparent that the basis suggested—which would as a starter be fair to all concerned—could be made effective and stands the best chance of adoption.

Reverting to the complaints of shippers that charges for refrigeration, when private cars are furnished, are excessive, the statement is renewed that railroad companies ought to compel the performance of such service at rates no higher than those which common carriers are able to command. It must be evident that the public will not allow this matter to rest until the charges for refrigeration are included and made a part of the freight tariffs; and the sooner that result is reached the better it will be for all parties. It can best be accomplished by railroad companies obliterating the obnoxious distinction now made between private cars when engaged in interstate commerce and their own equipment, thereby insuring equality of treatment to all shippers under like conditions.

My concluding thought is, that as every candid railroad officer admits present allowances for private cars, particularly refrigerators, are grossly excessive, it follows that if by competent authority their continuance should be enjoined, few, if any, would stultify themselves by defending the same. Why, then, not "get together," as President Roosevelt earnestly desires the railroads should, and put private cars on a basis which will be both reasonable and defensible? All that is required would be to cast off the yoke that long has been galling to every right-thinking man, and inaugurate conditions such as the undersigned has persistently advocated, and in that way do more than can otherwise be done to anticipate and probably avert legislation which can not, if provoked, fail to be disastrous to railroad companies.

Once more I offer to convene such number of parties, in any given territory, as may desire to meet for the purpose before stated, on receipt of request to that effect. Should the reform be started on the basis outlined it would be certain to extend over the country. I am sanguine it could be commenced, (1) by transcontinenal lines; 2) by those extending from the Missouri River to St. Louis and Chicago; or (3) by the controlling roads east of the Mississippi which operate in Central Traffic and Trunk Line territory. It is not essential to obtain the assent of every line in each group above described. Present practices are illegal, and it ought not to be necessary to await the action of all competitors in order to stop that which has been declared unlawful.

In suggesting a conference with the view of starting the private car reform, it should be understood that the per diem rates hereinbefore advocated are not necessarily the lowest that would be considered. If parties believe and are prepared to show that 40 cents per day or less would be sufficient to fairly compensate for the use of refrigerator cars, and that no more should be paid for a private stock car than for the equipment of railroad companies, views thus advanced would be treated considerately. The main thing is for the roads in a given section to "get together" with the determination to improve a situation that has become intolerable alike to the railroads and the public, and the precise form or extent of the reduction in allowances would surely be capable of reasonable adjustment.

Yours, respectfully,

J. W. MIDGLEY.

Before the Interstate Commerce Commission. In the matter of charges for the transportation and refrigeration of fruit shipped from points on the Pere Marquette and Michigan Central railroads. Brief on behalf of the Government.

This is a proceeding of inquiry and investigation instituted by the Commission upon its own motion in consequence of complaints received by it from shippers of fruit from points upon the Pere Marquette and Michigan Central lines to interstate destinations, which allege in substance:

1. That contracts affecting the transportation of fruits have been entered into between the Armour car lines and the Pere Marquette and Michigan Central Railroad companies.
2. That under such contracts Armour car line refrigerator cars are used exclusively by said railroad companies in the transportation of the greater portion of the fruit shipments originating upon their lines.
3. That under such contracts certain icing or refrigeration charges, fixed by the car lines, are applied by the railroad companies upon such shipments.
4. That each icing charges are greatly in excess of icing charges applied by the railroad companies upon this traffic prior to the time during which such contracts have been in force.
5. That the charges are stated to cover not only the icing or refrigeration, but also the use of the car, whereas no charge was previously made by the railroad companies for use of refrigerator cars in such traffic.
6. That the transportation charges of the railroad companies, including rates for icing or refrigeration, subject this interstate fruit traffic and persons engaged therein to excessive, unreasonable, and unjust cost of transportation.
7. That such charges subject interstate fruit traffic originating upon these lines of railroad and persons engaged therein to unlawful discrimination and undue and unreasonable prejudice and disadvantage in the competition in consuming markets with fruit originating upon other lines of railway and with persons engaged in the shipment and sale thereof.

JURISDICTION OF THE PARTIES.

By the order of the Commission instituting the proceeding the Pere Marquette Railroad Company, the Michigan Central Railroad Company, and the Armour car lines were made the respondents. The railroad companies are engaged in this interstate fruit traffic and do not question the jurisdiction of the Commission to make them parties to the proceeding. The Armour car lines is understood to assert that it is not a common carrier, and is, therefore, not a proper party to the proceeding. This car-line company may be properly made a respondent under and by reason of the extended jurisdiction conferred by section 2 of the act of Congress entitled "An act to further regulate commerce with foreign nations and among the States," approved February 19, 1903, which amends the act to regulate commerce. Section 2 of the act of February 19, 1903, provides:

That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration; and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

This is one of the "inquiries" or "investigations" referred to in the above-quoted section, and such "inquiry" or "investigation" was ordered by the Commission to be conducted "before the Commission," having for its object the "enforcement of the provisions" of the act to regulate commerce, a statute "relating to interstate commerce;" and it is expressly provided by section 13 of the act to regulate commerce that the Commission "may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made." Moreover, the order directing this investigation recites that complaint had been made, and conforms strictly to the provisions of section 13, relating to complaints, by setting forth a "statement of the charges," and calling upon the carriers (as well as the car-line company) to answer the same within a reasonable time, which was specified by the Commission.

The order shows and the record made at the hearing demonstrates that the car-line company is "interested in and affected by the rate, regulation, or practice under consideration."

JURISDICTION OF THE SUBJECT-MATTER.

As the record shows, these icing or refrigeration rates are not intended by either the railroad companies or the car-line company to cover the use of the refrigerator car, and the allegation in the complaint that they do cover the use of the car is based upon a notation to that effect erroneously inserted in the car-line rate schedule.

The complaint as recited in the order of the Commission includes the regular railroad rate with the car-line charge as constituting the cost of transportation to the shipper, but the only subject distinctly raised for consideration is the legality of the "said rates for icing and refrigeration" as part of such total cost or charge for transportation.

The answers of the respondent railroad companies do not question the jurisdiction of the Commission, and no such position was taken by either of them at the hearing.

The answer of the Michigan Central denies that it has entered into any contract or arrangement with the Armour Car Lines for icing and refrigeration service in the fruit traffic for the year 1904; but it admits that it had an arrangement (not a contract) with the Armour Car Lines covering the year 1903, substantially as described in the complaint set forth in the Commission's order.

The answer of the Pere Marquette admits that it is party to a contract of the kind described with the Armour Car Lines, shows that such contract became effective December 21, 1902, and expires November 1, 1905, and avers that rates fixed by the car lines are reasonable and just and subject no traffic to unlawful prejudice or discrimination.

The answer of the Armour Car Lines does raise the question of jurisdiction, not only as to itself, as above stated and considered, but also because, as it alleges, "the matters and things complained of are not part of interstate commerce jurisdiction," and "the icing and refrigerating of cars is not a matter of interstate commerce."

The claim of the Armour Car Lines is understood to be that the service of icing or refrigeration is a separate and purely local service, entirely disconnected from the service of transportation, and that neither neither the railroad company as a common carrier nor the Armour Car Lines, a private corporation doing the icing service under contract or arrangement with the carriers, is subject in respect thereto to regulation under the act to regulate commerce and statutes amendatory thereof.

Determination of this question of jurisdiction calls for consideration of the obligations of common carriers.

DUTY OF RAILROAD COMMON CARRIERS TO PROVIDE INSTRUMENTALITIES OF CARRIAGE.

The duty of railroad common carriers to provide suitable vehicles of transportation is one of the fundamental duties of the common carrier. (O. & L. C. R. Co. *v.* Pratt, 22 Wall., 123; Rice *v.* L. & N. R. Co., 1 I. C. C. Rep., 547; Rice, Robinson & Witherop *v.* West. N. Y. & P. R. Co., 4 I. C. C. Rep., 131; Ind. Ref. Ass'ns *v.* W. N. Y. & P. R. Co., 5 I. C. C. Rep., 415; 4 Elliott on Railroads, sec. 1470; 6 Cyc. of Law, 372; Ray on Negligence of Imposed Duties, sec. 3.)

The duty of a common carrier by railroad to provide suitable cars applies to all descriptions of traffic as to which, under its charter and in the course of its business, it holds itself out as a common carrier. The cars must be adapted to their intended use. A flat car will not do for the carriage of grain and a plain box car may be unsuitable for the transportation of horses or for the movement of dairy products in certain seasons. This duty can not be transferred to or required of shippers.

(Railroad *v.* Pratt, 22 Wall., 123; Ray on Negligence of Imposed Duties, secs. 3 and 4; 4 Elliott on Railroads, sec. 1474, citing Beard *v.* Ill. Cent. R. Co., and other cases; Rice *v.* W. N. Y. & P. R. Co., 4 I. C. C. Rep., 131.)

The obligations and liabilities of a common carrier are not dependent upon contracts, though they may be modified and limited by contract. They are imposed by law, from the public nature of the employment.

The liability of a common carrier of goods and merchandise attaches when the property passes, with its assent, into its possession, and is not affected by the carriage in which it is transported, nor by the fact that the carriage is loaded by the owner. The common carrier is an insurer of the property carried, and the duty rests upon it to see that the packing and conveyance are such as to secure its safety. (Hannibal & St. J. R. Co. *v.* Swift, 12 Wall., 262.)

A railroad company by the very act of accepting goods for transportation thereby enters into an implied undertaking to furnish such cars as may be necessary for their safe transportation. (Wing *v.* N. Y. & E. R. Co., 1 Hilt. (N. Y.), 241.)

A carrier's duty is not limited to the transportation of goods delivered for carriage. It must exercise such diligence as is required by law to protect the goods from destruction and injury from any source which may be averted and which, in the

exercise of care and ordinary intelligence, may be known or anticipated. Many articles of commerce when transported must be protected from storms, rain, sunshine, and heat, and must have cars suitable for their safe transportation. (Ray on Negligence of Imposed Duties, p. 18.)

If the carrier is informed that the goods are perishable, or should know it from the nature of the goods, the carrier is bound to use all reasonable precautions and means to prevent loss. (Sager *v.* Portsm., S. & P. & E. R. Co., 31 Me., 228.)

It is a part of the common-law liability of the carrier in the selection of its vehicles to provide itself with those of the most approved modes of construction and such contrivances as are in approved use for the prevention of loss or damage to the goods it undertakes to carry. (Boscowitz *v.* Adams Exp. Co., 93 Ill., 523. See also Steinweg *v.* Erie R. Co., 43 N. Y., 127.)

And not only must it provide itself with means sufficient to transact the business for which it has advertised and held itself out to the public as soliciting, but it must provide itself with means of transportation safe and suitable for the business in which it engages. (Hutch. on Carr., sec. 293; Wood on Railroads, secs. 429 and 430, citing the following English cases: Beckford *v.* Crutwell, 5 C. & P., 242; Lyon *v.* Mells, 5 East, 428; Shaw *v.* York, etc., Ry. Co., 13 Q. B., 347.)

Where the marks on the package and the waybill disclosed that the subject of shipments is such as should be transported in refrigerator cars during warm weather, the carrier will be liable for neglect in providing such means of transportation. (Ray on Negligence of Imposed Duties, sec. 4, citing many cases.)

If improved cars for the transportation of articles of commerce liable to injury from heat were in use, it was defendant's duty to use such cars in carrying the butter. (Beard *v.* Ill. C. R. Co., 97 Iowa, 518.)

A carrier which accepted for transportation in winter time a quantity of delicate fruit, likely to be injured by freezing unless protected, and sent it on in a common box car, whereby it was injured, when a refrigerator car would have protected it, was held liable for not using the refrigerator car. (Merchants' Dispatch Co. *v.* Cornforth, 3 Colo., 280.)

Where a carrier fails to furnish refrigerator cars as agreed for a shipment of melons, the plaintiff has only to show that defendant is such a carrier, and refuses to carry the fruit, which was the cause of the damage to the shipper. (Mathis *v.* So. Rwy. Co. (S. C.), 30 Am. & Eng. R. Cas. (N. S.), 825.)

The California Fruit Transportation Company, for a consideration, furnished its cars to the plaintiff in error. These cars were agencies or means employed by the plaintiff in error for carrying on its business and performing its duty to the public as a common carrier, one of which was to provide suitable cars for the safe and expeditious carriage and preservation of the freight it undertook to carry. (N. Y., P. & N. R. Co. *v.* Cromwell, 49 L. R. A. (Va.), 462.)

A carrier which receives for transportation over its own line a carload of vendible fruit from a connecting carrier in a car which is not adapted to carrying such fruit is liable for loss of fruit resulting from its failure to put it in a car reasonably fit for its transportation, or to notify the consignee of the condition of the car and fruit and obtain instructions in regard thereto. (Shea *v.* C., R. I. & P. R. Co., 66 Minn., 102.)

The foregoing authorities include the leading cases upon the subject and clearly establish the duty of the common carrier by railroad to furnish suitable vehicles for the safe transportation of each and every article it undertakes to carry. The obligations of the carrier do not compel it to render impossible or even extraordinary service. It may, for example, safely carry perishable fruit for short distances in ordinary cars, and yet be utterly unable to use the ordinary box car in safely transporting the same commodity over long distances. It is doubtful whether it would be required to engage in such long-distance traffic against its will.

But if the carrier notifies the public that it will, for a stated price and under regulations prescribing the method and form of shipment, transport the perishable fruit over long distances, it makes itself a common carrier of such fruit and must, in the discharge of a primary duty, provide such means of transportation, including the car, motive power, necessary handling, and other attention as will enable it to deliver the property in good condition at the point of destination. This duty is inherent in the business of common carriage. It can not be transferred to or required of the shipper, for the carrier only can perform it, and under the cases mentioned failure on the part of the carrier to perform such duty is negligence for which, in case of loss, it may be made to respond in damages.

DUTY OF RAILROAD COMMON CARRIERS TO PROVIDE REFRIGERATION.

The discharge of this duty by the common carrier to transport safely and deliver in good condition all articles of perishable freight which it may undertake to carry

involves not only the provision of a suitable car, which for long distances may be a refrigerator car, but also due care of the property in transit, including the operation of the car to effect the purpose of its design and the object of its use, namely, refrigeration, and this under the present methods of car construction means providing ice in the car during the course of transportation, for which a reasonable charge may be exacted.

The common law undoubtedly requires care in transporting perishable goods, and, under modern methods, we have no doubt that it would be held to extend to proper refrigeration, according to established custom. (Johnson *v.* Toledo, S. & M. Ry. Co. (Mich.), 34 Am. & Eng. R. Cas. (N. S.), 137.)

A railroad carrier that accepts for transportation goods of a perishable nature, which require cars and equipments of a peculiar kind, undertakes, in the absence of some fact changing the nature of the undertaking, that it has such cars and equipments, and that it will properly use them in the transportation of such property. (4 Elliott on Railroads, sec. 1475.)

A carrier that has accepted butter for transportation can not escape liability for damage to the butter from the heat during transportation by the fact that it did not have refrigerator cars which were ready for use, at least when it could have been carried safely by the use of ice in the cars which were used. The sealing of a car containing butter, when received from a connecting carrier, is no excuse for failure to put ice in the car if necessary to protect the butter from the heat. (Beard *v.* Ill. C. R. Co., 97 Iowa, 518, 7 L. R. A., 280.)

It is said that the rate of charges, as shown by the waybill, was for common cars, and the defendant therefore undertook to furnish no other kind. If the freight charges fixed in the waybill do not express a contract that the butter may be transported so as to destroy its value, and that the carrier is excused from the exercise of the care required of him by law, we think the freight charges in no case will limit the care to be exercised by the carrier and restrict his liability. The defendant was not restricted by the rate of freight charges named in the waybill from claiming and enforcing the payment of a just compensation for charges incurred on account of outlays made in order to safely transport the goods. (Summer *v.* Southern R. Assoc., 7 Baxt., 345; Beard *v.* Ill. C. R. Co., 97 Iowa, 518, 7 L. R. A., 280.)

A railroad undertaking to carry produce and properly care for the same is liable for damage to such freight caused by the negligence of the transportation company furnishing the cars for the railroad in failing to properly ice them. (N. Y. P. & N. R. Co. *v.* Cromwell, 49 L. R. A. (Va.), 462.)

A railway company can not escape responsibility for its failure to provide cars reasonably fit for the conveyance of the particular class of goods it undertakes to carry by alleging that the cars used for the purpose of its own transit were the property of another. The undertaking of the plaintiff was to properly care for and safely carry the fruit of the defendant in error, and it is immaterial that the cars in which they were carried were owned by the California Fruit Transportation Company, or that such company undertook to ice said cars or to pay for the ice. As between the plaintiff in error and defendant in error, the California Fruit Transportation Company and its employees were the agents of the plaintiff in error. So far as the defendant in error was concerned, the plaintiff in error was under the same obligations to care for the fruit that it would have been had the refrigerator cars belonged to it. (N. Y., P. & N. R. Co. *v.* Cromwell, 49 L. R. A. (Va.), 462.)

In this Cromwell case the court based its conclusions upon the case of Pennsylvania Co. *v.* Roy (102 U. S., 451), in which Justice Harlan said: "The law will not permit a railroad company, engaged in the business of carrying persons for hire, through any device or arrangement with a sleeping-car company whose cars are used by the railroad company and constitute a part of its train, to evade the duty of providing proper means for the safe conveyance of those whom it has agreed to convey." To the same effect see Thomas *v.* West Jersey R. Co., 101 U. S., 71; Gibbs *v.* Balt. Gas Co., 130 U. S., 396; St. L., V. & T. H. R. Co. *v.* T. H. & I. R. Co., 145 U. S., 393.

Where a railroad company had contracted to ship melons in iced cars, the liability of the railroad company for failure so to do does not depend upon whether the company who was to furnish the cars was a common carrier. A common carrier is not exempt from liability for failure to ship melons by the fact that the refrigerator company whose cars it was intending to use failed to furnish them. In an action against a carrier for failure to furnish iced cars for shipment of melons as agreed, it can not show as a defense that it held itself out as willing to haul iced cars to be furnished by another company under a contract with the shipper. (Mathis *v.* Southern Ry. Co. (S. C.), 30 Am. & Eng. R. Cas. (N. S.), 825.)

Said the court in the Mathis case (supra): "Such a rule would enable a railroad company to shift its responsibility as a common carrier on others, which can not be

done. It must transport when the demand is made, unless excused, and it can not refuse on the ground that others had assumed any part of the duty resting on it as a common carrier."

Where a carrier gave a bill of lading for a car of perishable fruit for shipment beyond its own line, reciting the receipt of the goods in apparent good order, consigned from Michigan to another State, subject to the carrier's liability under the common law and statutes in force in the various States through which the goods might pass, and that the car was to be iced at G. and reiced as often as necessary, the carrier issuing such bill was liable for damage to the fruit by reason of its failure or the failure of a connecting carrier to keep the car properly iced. (Johnson *v.* Toledo, S. & M. Ry. Co., 31 Am. & Eng. R. Cas. (N. S.), 137 (S. C.).)

The storage and preservation of dressed meats in a refrigerator during the transportation thereof by a vessel is no part of the usual duty of a common carrier, and his obligation concerning the same may be a matter of contract. (The Prussia, 88 Fed. Rep., 531.)

This case was appealed to the circuit court of appeals, which, though affirming the decision of the court below, modified the above statement by saying: "It is the duty of the carrier by water, when he offers a vessel for freight, to see that she is in a suitable condition to transport her cargo in safety; and he impliedly warrants that this duty has been fulfilled. And when he proposes to transport across the Atlantic a cargo of frozen meat we agree, as was adjudged in The Maori King (1895), 2 Q. B., 550, and Queensland National Bank *v.* Peninsula and Oriental Steam Nav. Co. (1898), 1 Q. B., 567, that he must be taken to stipulate with the shipper that the vessel is provided with suitable apparatus of requisite efficiency to enable him to deliver it in proper order." (The Prussia, 93 Fed. Rep., 837.)

An adequate or suitable car equipment is in most cases something in addition to the naked cars or boxes themselves. Where a carrier undertakes to transport passengers, seats, water, ventilation, and lights are essential to the comfort, health, and safety of the passengers, and are therefore necessary parts of an adequate car equipment for that class of traffic. So, when carriers undertake to transport highly perishable traffic, requiring refrigeration in transit, ice and the facilities for its transportation in connection with that traffic are incidental to and inseparable from the service of transportation itself. We are of the opinion, therefore, that the defendants, as common carriers, are under the law charged with the duty of furnishing the ice necessary for the refrigeration of strawberries which they undertake to transport, that the expense thus incurred is a necessary element of the cost of the transportation of such traffic, and the amount received or demanded therefor is a freight charge. (Truck Farmers' Asso. *v.* N. E. R. Co., 6 I. C. C. Rep., 295.)

EXEMPTION OF THE CARRIER FROM LIABILITY ON ACCOUNT OF INHERENT DEFECT IN THE PROPERTY CARRIED.

The carrier is exempt from liability for loss caused by inherent defect in the property transported only in case it has performed its duty as a common carrier in relation to such property. It can not establish an exemption in its favor when the loss (no matter what the nature of the article it undertakes to carry may be) is attributable to its negligence. In these days of modern methods and improved facilities and instrumentalities of transportation, under which the most delicate freight is carried daily across the continent and between all points, the duty of properly caring for perishable goods which the carrier offers to transport over the distance involved in the shipment means the employment of such facilities, including refrigeration to perishable property while in transit; and if they are not furnished, the plea of nonliability because of the inherent nature of the goods will be of no avail.

The carrier, if not himself at fault, can not be held liable for losses caused by the inherent nature, vices, defect, or infirmity of the goods themselves, as in the case of decay, waste, or deterioration of perishable fruits, evaporation of liquids, natural death of an animal, vicious or uncontrollable nature of live stock. (Hutchinson on Carriers (2d ed.), sec. 216a.)

Where fruit had been frozen because of the means of discharge from the vessel, which means was assented to by the libelant, no damages were awarded, the carrier having taken reasonable precautions to prevent the fruit from being frozen while in the ship. (The Alesia, 35 Fed. Rep., 531.)

While at common law the carrier can not be held for the loss when in no sense the result of its own negligence, yet if it can be shown that the loss might have been avoided by the use of proper precautionary measures and that the usual and customary methods for this purpose had been neglected, the carrier may still be held liable. (Clark *v.* Barnwell, 12 How., 272.)

recent decision of the United States Supreme Court (May 16, 1904) the Clark cited with approval. "If the loss might have been avoided by skill and dili- at the time, the carrier is liable." (Cau *v.* Tex. & Pac. R. Co., 194 U. S. ——.) ıough the loss might occur by the act of God, yet if it might have been avoided ll and diligence at the time, the carrier is liable. What would be sufficient care ; of ponderous articles, not liable to deteriorate by exposure, might be the most ɔle neglect in the case of costly and perishable goods. (Wolf *v.* Am. Exp. Co., ı. Dec. (Mo.), 406.)

law is so well established on this point that further citation need be made for ırpose only of showing briefly the terms used and the kind of traffic involved. ence of the carrier and consequent liability is declared upon the following ls: Want of proper care and diligence (Elliott on Railroads, sec.). Care- ss of the carrier in furnishing unsuitable cars (Ray on Negligence of Imposed , sec. 59). Leakage of liquids when such leakage could be controlled by the (Nelson *v.* Woodruff, 1 Black, 156). Failure to provide proper ventilation ɔds and failure of the carrier to provide sufficient ice to keep meat in course of ortation (Davidson *v.* Gwynne, 12 East, 381, and other cases cited in P on f Lading). Want of due diligence in ventilation and caring for grain (Lewis ɔess, 18 La. Ann. Rep., 1). Failure in transporting wine to provide ventilation revent or check damage the goods might sustain from natural causes (The ible, 3 Sawyer, 176). Failure to unpack and dry goods that have become wet ɜaux *v.* Leach, 18 Pa. St., 224; The Niagara *v.* Cordes, 21 How., 7). Omission e skins beaten and ventilated when hides are liable to be destroyed by worms Bark Gentleman, 1 Blatch., 196). Failure to feed a horse in the carrier's cus- the right existing to recover from the owner the cost of its keep (Gt. No. R. Swaffield, 9 Exch., 132).

true that the case of *The Prussia*, hereinbefore cited under another heading, ided in the circuit court, was to the effect that refrigeration during transporta- y a vessel is no part of the usual duty of a common carrier (88 Fed. Rep., 531), is was substantially overruled by the circuit court of appeals in the following ge:

the duty of the carrier by water, when he offers a vessel for freight, to see ıe is in a suitable condition to transport her cargo in safety; and he impliedly ıts that this duty has been fulfilled. And, when he proposes to transport the Atlantic a cargo of frozen meat, we agree, as was adjudged in *The Maori* 1895), 2 Q. B., 550, and Queensland National Bank *v.* Peninsula & Oriental Nav. Co. (1898), 1 Q. B., 567, that he must be taken to stipulate with the ship- at the vessel is provided with suitable apparatus of requisite efficiency to enable deliver it in proper order. (*The Prussia*, 93 Fed. Rep., 837.)

cent exhaustive decision by the United States Supreme Court, reversing the t court and circuit court of appeals, is to the effect that a water carrier holding ut as a common carrier of perishable goods has the initial duty of providing ɔerating proper refrigerating apparatus for the safe carriage of such commodi- This case applies the common law as modified by the Harter Act. (Martin *v.* ark, 191 U. S., 1.)

CHARACTER OF THE SERVICE OF REFRIGERATION.

respondent, the Armour Car Lines, will doubtless contend that the refrigera- ıarge is for a local service and that such local service, while in aid of transporta- not a part thereof. If it be the duty of a railroad company to provide a refrig- car for the carriage of perishable fruit, it is plainly the duty to so operate that ring the transportation as to accomplish the object for which it is furnished. refrigerator cars are really summer and winter cars. They are used by the dent railways to prevent freezing in winter and decay from heat in summer, ey are fitted with apparatus designed to secure free circulation of air. Is it ty of the common carrier to open and close the ventilators as care of the fruit ɔquire? Is it the duty of the carrier to so use these cars that the traffic carried ɔt freeze in cold weather? Undoubtedly it is. If that is so, its obligation to icing appliance is also manifest, and the mere circumstance that ice must be ɔd from time to time can not change that obligation. Especially is this so when rrier's right to impose a charge for this necessary care, either as part of the as a separate exaction, is established.

agency employed by the carrier to put ice in the car is no more subject to tion as a common carrier than is the conductor in charge of the train or the er who runs the engine, and the mere subsidiary service of icing the car is no ubject to separate control than is that of the man who tends the switch or the ɣee who supplies water for the locomotive boiler. These, with other necessary

services, make up, however, the service rendered as a whole by the carrier to the public, for which it is entitled to tax the public as represented in its patrons, and for which and the facilities it renders therefor it is subject, in respect to interstate transportation, to regulation under the act to regulate commerce by this Commission.

In the carriage of perishable fruits over considerable distances refrigeration is as indispensable a part of the transportation service as that the car must be inclosed to protect the traffic from ravages of the weather. It is required in transportation for the same reason that transportation involves movement, for freight must be transported safely or it will not be transported at all. Whatever is necessary to the transportation which the common carrier has offered to perform is part of the duty to be discharged by the common carrier, and is therefore a part of the service of transportation. The cases cited under other headings fully declare the obligations and responsibilities of the carrier in this respect.

Whatever is not necessary to the proper performance of the service which the common carrier holds itself out to do for hire may well be considered, if rendered, as accessorial or so remotely involved as to bear no direct relation to such service, and in considering these outside matters it should be kept in mind that some of them are regarded as disconnected from the transportation service proper by force of long usage or the nature and requirements of commodities, and the methods employed in commerce and trade.

The feeding, watering, and resting of live stock is a duty enjoined by statute as well as by the common law. The carrier must furnish the unloading and loading facilities; custom has fixed in different localities the price of services attendant upon watering and feeding, and the general rule is that the shipper or his employee travels upon the same train to look after the needs of the stock. The nature of the traffic and the universal method of caring for the stock are such that the carrier is not generally under the necessity of doing more than operate the train with reference to permitting the feeding, watering, and resting of stock. But if the carrier should include as part of its service the work and expense of handling, feeding, and watering the stock, imposing a charge therefor, either separately or including it in the total rate, excluding the shipper from any opportunity to perform the service itself or having it done by others, a violent change in established usage would occur, with the result of incorporating what are now mere accessorial services into the transportation service itself.

Elevator service in the handling of grain is a service which at initial points may be paid for by the shipper or at intermediate points may be paid for by the carrier as a matter of convenience in handling and transfer from one line to another; or, again, it may be paid for by the shipper or the carrier at terminal points under established tariff regulations. This service may be provided as a matter of economy or convenience to the carrier in some instances, or for the purpose of handling grain antecedent or subsequent to the transportation. Sometimes the shipper desires grain to be cleaned in transit. If he does, that is plainly a service which the transporting company may not be called upon to provide as a part of its primary duty as a common carrier.

Insurance charges evidently relate to a transaction entirely separate from the service of transportation. Safe transportation by rail does not depend upon insurance, and the shipper is left wholly free to exercise his option to insure or not insure traffic carried under regulations prescribing owner's risk.

Switching, bridge, and terminal services are ordinarily included in the rate or provided for separately in tariffs of the carriers. It may occur as it did in the K. & I. Bridge Co. *v.* Railroad Co. (37 Fed. Rep., 567), that the bridge company itself is not a common carrier, just as here the Armour Car Lines is not a common carrier; but the railroad company's rate on interstate traffic to and from Louisville in that case covered transportation across the bridge, and was not under consideration. The question there was whether the bridge company was a common carrier entitled to equal facilities in the interchange of interstate traffic. It was really a contest concerning the use of one of two bridges at Louisville.

Here, again, whether switching or terminal charges are subject to regulation as part of charges on interstate traffic depends upon the offer to carry, and other facts in each case; in other words, how the terminal service is connected with the interstate transportation service. Carriers leading to Chicago established a live-stock terminal charge for delivery at the Union Stock Yards in Chicago. The Stock Yards Company, over whose lines the traffic was carried in Chicago to the stock yards, has been held not to be a common carrier, but the railroad companies bringing the live stock to Chicago and providing for delivery at the stock yards were held responsible for the charge. They had undertaken to deliver stock at the stock yards, and they thereby made themselves subject to regulation in respect to the additional charge

thus imposed upon the traffic. (Cattle Raisers' Asso. *v.* Ft. W. & D. C. Ry. Co., 7 I. C. C. Rep., 513.)

Drayage and cartage are usually local services for which the railroad carrier assumes no responsibility. The shipper is left free to do his own cartage. The railroad company may even undertake to do the work for a fixed sum, and for such purely accessorial service it may be questioned whether the charge therefor would be subject to regulation as part of interstate commerce so long as shippers or consignees are permitted to exercise the option of carting the goods for themselves. But here again, let the carrier establish a rule, as a condition of receiving, transporting, and delivering goods, that the goods will only be received or delivered at warehouses or stores of shippers and consignees, and it thereby makes itself a common carrier from and to such warehouses and stores, and, as to interstate traffic, its acts in regard to such service and charges imposed therefor would become subject to regulation under the act to regulate commerce. Any cartage agency it may employ would not be subject to any such regulation as a common carrier, but plainly the carrier would be. The well-known English Parcels cases are in point upon this subject: Pickford *v.* Grand Junct. Ry. Co., 10 Mees. & W., 399; Baxendale *v.* Gt. W. Ry. Co., 3 C. B. N. S., 324; Garton *v.* Gt. W. Ry. Co., 6 C. B. N. S., 639.

Express companies perform services which were well known at the time the act to regulate commerce was passed. They collect, have transported, and deliver certain kinds of traffic requiring speed in transportation upon which charges greatly in excess of freight charges are imposed. This Commission has held that these companies are not subject to that statute. (In re Express Companies, 1 I. C. C. Rep., 349.) On some roads milk is carried only by the express companies. It is understood that fruit is sometimes carried in that way. Whatever may be finally held when the question is squarely presented as to the responsibility of the railroad company for the rates it allows to be charged for express matter carried over its line, the controlling fact here is that this perishable fruit traffic is transported by these carriers as freight under the well-settled obligations resting upon them as to the safe transportation of freight articles.

The test of the carriers' obligations and responsibilities, as hereinbefore shown, is clearly found in the service it undertakes exclusively to perform. The business of common carriage by railroad is a natural monopoly, and when the railroad company holds itself out to do certain things as a common carrier which are necessarily or by force of conditions imposed by it upon the traffic as part of its service as such common carrier, it assumes the duty and obligation of performing the whole of such service, and is subject to regulation by governmental authority respecting any part of such service. This principle seems fully covered under this and other headings herein, but it may be of value to consider separately (if it shall be held not to be the duty of the carrier to refrigerate traffic by means of the refrigerating appliance which it has furnished as a part of a refrigerator car put in service upon its line) whether the carrier, when it enters into an exclusive contract with a private corporation to do the refrigeration, thereby preventing the shipper from providing refrigeration at his own cost, does not make the icing a part of its service and subject itself to regulation as to the reasonableness and justice of the charges imposed upon the traffic for refrigeration.

ASSUMPTION OF OBLIGATION BY THE CARRIER UNDER CONTRACTS WHICH EXCLUDE THE SHIPPER FROM PROVIDING REFRIGERATION OF PERISHABLE FRUIT.

The great bulk of carload traffic on railroads in the United States is loaded and unloaded by shippers at their own expense under tariff regulations prescribed by the carriers. The service of loading and unloading goods is in itself purely local, and yet it is a service which is necessarily connected with the transportation. Some rates on carloads cover the loading and unloading as well as the service of hauling. When the carrier itself undertakes to do the work of loading, as undoubtedly it may rightfully do, it may either make the transportation rate cover the whole service, or as is done in Great Britain, segregate the unloading and loading charges from the charge for transportation. (Walker *v.* Keenan, 73 Fed. Rep., 755; I. C. C. *v.* C., B. & Q. R. Co., 186 U. S., 320.) In either case the charge must be reasonable and just. Now suppose the carrier should notify its shippers that all loading and unloading of carload traffic shall be done exclusively by the Armour Car Lines at rates fixed by that corporation. It can do that only upon assumption by itself of the work of loading and unloading and employment of the car lines to perform that service. Unquestionably the railroad company would be responsible for the reasonableness and justice of charges so imposed by its employee or agent, the car lines. In that state of affairs there could be no freedom of action left for the shipper.

That is precisely what is done in this case. Here are fruits grown in the State of Michigan which ripen and are ready for shipment in the summer and early fall. The carriers have made the necessary arrangements for through transportation, and have established rates on this fruit to many long-distance destinations. They hold themselves out as common carriers of this delicate traffic. Recognizing that the fruit can not be safely transported in ordinary cars, and realizing their duty to furnish suitable equipment, the initial carriers have acquired, and for each such shipment they provide, refrigerator cars to be used in the transportation. They formerly refrigerated the cars without any charge in addition to the rate. They subsequently established a refrigerator charge amounting to the cost of icing, whatever that might be. They finally, for reasons of their own, entered into an exclusive contract or arrangement with the Armour Car Lines to not only furnish the cars, but to do the refrigeration service at rates which the car lines might charge, but not to exceed certain sums agreed upon and referred to in the contract. In consequence of that contract or arrangement the Armour Car Lines has since done the refrigerating of these cars at points of shipment and at various established reicing stations en route. The shipper can not get a refrigerator car upon the respondent railway lines in Michigan for the shipment of peaches or other fruit to destinations requiring refrigeration unless he pays the Armour Car Line icing charge. He is debarred from doing the icing himself and from arranging to have it done en route. He can not ship a car of fruit to Boston, New York, Louisville, Dubuque, or anywhere, in the season requiring refrigeration in transit without paying the charge imposed by the Armour Car Lines under and by virtue of its exclusive contract with the railroad company. The shipper can not even provide his own car and do his own icing. The car-line charges are billed by the railroad company and collected by the railroad company. If the icing or refrigeration service is not a railroad function as to this traffic, the railroad company has made it so in the most effective manner possible. If the theory of the respondent, the Armour Car Lines, is correct, then under this state of affairs neither the railroad company nor the shipper has anything to do with the icing, and by virtue of some right as yet undiscovered this foreign car-line corporation, claiming to be neither a common carrier nor the agent of a common carrier, nor maintaining any contract relation with the shipper, can lawfully step in and assess against shippers, upon traffic going over the Pere Marquette and Michigan Central railroads, a charge for icing cars furnished by those roads. It is submitted that the icing or refrigeration of these cars can only be done by or under the authority of the railroad company or the shipper, that it inheres in one or the other of these parties, and if in the shipper the railroad company has transferred the duty to perform that service to itself by the exclusive contract or arrangement with the Armour Car Lines. It seems unnecessary to repeat the previous citations made herein under other headings which support this obviously sound proposition.

Section 1 of the act to regulate commerce requires that all charges made for any service rendered in the transportation of property, or in connection therewith, shall be reasonable and just, declares any unreasonable or unjust charge for such service to be unlawful, and makes the term "transportation" include all instrumentalities of shipment or carriage.

This section was construed by the Commission in the Truck Farmers' case (6 I. C. C. Rep., 295) to apply to the refrigeration charge, because the refrigeration service is inseparable from the service of transportation itself; but if the Commission shall nevertheless now conclude that the refrigeration service is not part of the transportation service, and is something to be performed or secured by the shipper, then it is submitted that the regulation of the carrier, made in consequence of the contract with the car lines, whereby the shipper is completely deprived of all opportunity to care for his own property in transportation, makes the refrigeration service one which the carrier undertakes to render "in connection" with the "transportation of" this species of "property," carried by the carrier in refrigerator cars used by it as "instrumentalities of shipment and carriage" in such "transportation."

DUTY OF THE CARRIERS TO PUBLISH REFRIGERATOR CHARGES.

The sixth section of the act to regulate commerce requires carriers to publish their transportation charges and file copies with the Commission. They must include in their tariffs not only the rates for carriage, but such tariffs must also show separately therein the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of their rates and charges for transportation. The respondent carriers herein are required by this section to include in their schedules of charges exacted by them, or through the agency of the Armour car lines, for the refrigeration of this fruit traffic from Michigan, and their failure to do so renders them subject to penalties provided in the statute as amended.

THE REFRIGERATION RATES CHARGED AND COLLECTED BY THE RESPONDENT RAILROAD COMPANIES PURSUANT TO THEIR EXCLUSIVE CONTRACT OR ARRANGEMENT WITH THE ARMOUR CAR LINES ARE UNREASONABLE AND UNJUST AND SUBJECT SHIPPERS AND CONSIGNEES OF MICHIGAN FRUIT TO UNDUE AND UNREASONABLE PREJUDICE AND DISADVANTAGE.

The time since the transcription by the reporters of the notes taken at the hearing has been too short to permit careful reexamination of the testimony and exhibits, and the statements made below are based upon recollection.

The respondent carriers for a long period of years furnished refrigeration for these fruit shipments without any charge in addition to the straight transportation rate.

These carriers in 1901 or 1902, by amendment of the official classification, which they adopt and use, and which is by law a part of their rate schedules, imposed a charge for the icing of fruits, including grapes and berries, which is testified to represent practically the actual cost of the icing service.

Prior to the 1902 season on the Pere Marquette and 1903 on the Michigan Central, when Armour Car Line cars were used for the fruit in question, and icing was done by the car lines at the request of the shipper, the charge made by the car lines was greatly less than has since been exacted by the car lines under the contract or arrangement, and approximated the cost of icing charge made by the carriers. For example the Armour icing charge per car to Boston was $20. Upon the taking effect of the contract in 1902 on the Pere Marquette, and of the arrangement of 1903 on the Michigan Central, this charge to Boston was made $55. The Armour Car Line refrigeration service was as satisfactorily performed at the $20 charge as it has been under the $55 charge.

The icing charge formerly made by the carriers to Dubuque and Duluth has been as low as $7.50 per car and up to $12, and, perhaps in rare instances, $15 to Duluth. The charge now is $37.50 per car to Dubuque aed $45 to Duluth. Similar disparities are shown between former and present charges to market points.

Under these high refrigeration charges the customary markets for Michigan peaches in Duluth, St. Paul, Minneapolis, Dubuque, and other cities have been nearly, if not entirely, closed, at least to the extent of transferring the demand for peaches in those markets when practicable to peaches grown in other sections. In addition to this high icing charge the ordinary freight rate to Duluth has been increased about 10 cents per 100 pounds.

The shippers and the traffic are undoubtedly benefited by any arrangement made by the railroad companies under which a steady supply of refrigerator cars is furnished, for such cars are indispensable to the transportation the carriers undertake to perform; and although many shippers controlling large proportions of the traffic testified that they could secure plenty of such cars from lines connecting with the respondent railroads, the provision of such cars promptly by the initial carrier without restriction as to destinations, as required by shippers, is of great advantage in the trade. This, however, is nothing more than the discharge of the obligation resting upon the carrier when it, with its through-line connections, offers to carry these perishable commodities to long-distance markets. The provision of these cars by the carriers adds no justification for the excessive and burdensome charges imposed for the refrigeration of such cars.

This traffic is carried under a provision in bills of lading releasing the carrier from any loss or damage resulting from causes beyond its control, or by floods, fire, riots, strikes, leakage, breakage, chafing, loss in weight, changes in weather, heat, frost, wet, or decay. To the extent that it may control any such loss or damage it is not exempted from liability in the bill of lading or at law. In the contract between the Pere Marquette and the Armour car lines the latter agrees to indemnify the carrier for any damages it may be required to pay upon claims arising from any failure on its part to properly ice and keep iced the refrigerator cars furnished under the contract. The same agreement is included in the arrangement with the Michigan Central.

The service provided by the Armour car lines is satisfactory to the shippers. The testimony strongly indicates that frequently more ice is placed in the cars than is necessary to insure safe transportation of the fruit. This is further supported by the fact that what are termed half-tank rates are offered to shippers upon condition of absolute release on account of "spoilage." These are about two-thirds the full icing rates. Michigan peaches have usually been sent to Boston in greatest quantity in September, and the transportation to Boston, Duluth, and other destinations involving carriage through the more northerly section of the country in the fall can not require the elaborate icing which the car lines claim to give during the entire season. Grapes, a much hardier fruit than peaches, are given as much ice as peaches. There is no distinction made in the icing tariffs between peaches or plums and grapes,

nor are lower charges made for shipments during the cooler months, or for shipments involving carriage in northern latitudes only.

These icing tariffs give a large profit to the car lines, although the duty of the carrier to safely transport seems to prohibit it from adding considerable profit to the economical cost it previously incurred in discharging its common carrier's obligation respecting preservation of the traffic in transit. Certainly it can not rightfully provide an extravagant and unnecessary service and insist upon a large profit to itself or its agent.

Numerous shippers testify that they could provide their own icing and arrange for reicing at customary reicing points, and the evidence shows that the cost of the necessary refrigeration would be far below the charges imposed under the arrangement with the Armour car lines.

The carriers discriminate unjustly in the application of the icing charges and pay rebates to Moseley Brothers, of Grand Rapids, who own a line of refrigerator cars. These cars, notwithstanding the exclusive car arrangement with the Armour car lines, are used by the roads for shipments by Moseley Brothers. All such shipments are billed out with the Armour car line icing charges, which the consignee is required to pay. These charges, less the actual cost of icing, are paid by the railroad companies to Moseley Brothers. All shipments by other shippers are invariably charged with the car-line icing charges, and these are paid over to the car lines by the railroad companies.

Prior to the arrangement with the Michigan Central and with other roads leading from Grand Rapids, such as the Grand Rapids and Indiana and Grand Trunk, shipments from the city of Grand Rapids over the Pere Marquette were excepted in the contract with that company from the application of the Armour car-line charges. This was due to the competition for the traffic from Grand Rapids, under which the icing charges on shipments from that point must be as low via the Pere Marquette as by any other line leading therefrom. The extension of the Armour car-line charges, under arrangements with the other lines, completely suppressed this beneficial competition at Grand Rapids, a large fruit-shipping point. In the same way the contract with the Armour car lines over a single line, like the Pere Marquette, extinguished all competition for the furnishing of ice to the railroad or to shippers for this traffic at initial and reicing points.

Respectfully submitted.

MARTIN S. DECKER, *Special Attorney.*

GOVERNMENT CONTROL OF RAILROAD EARNINGS.

MINNEAPOLIS, *January 12, 1905.*

Mr. GEORGE W. SEEVERS,
General Solicitor, Oskaloosa, Iowa.

DEAR SIR: I duly received your favor of the 30th ultimo requesting some expression of my views with regard to the control of railroad freight rates by the Federal Government. I have been delayed in answering, by the pressure of other business and the desire for sufficient time, without interruption, to write you at some length on the subject.

I want in the beginning to say something about the soundness of the premises upon which are based the popular beliefs that railroad earnings should be under Government control, and that the present rates sometimes give larger earnings than the railroad companies should have.

The popular arguments made to justify Government control of railroad earnings are based upon the facts that railroad companies may exercise the right of eminent domain and have in some cases come into possession of lands previously owned by the State. I can not see that the railroads are indebted to the Government, State or Federal, on either of these accounts.

No Government of ours has ever given the right of eminent domain to a railroad company in the sense of granting it for the benefit of that company. The right of eminent domain is for the public good and was given for that and for no other reason. It was granted because without it there never could have been a highway and the country could not have been populated nor developed into the great commonwealth it is. There may be propriety in the Government, State and Federal, claiming a right to say what everyone shall charge for service on the public highways that have been made possible through the exercise of the right of eminent domain and paid for by the public, but the State's relation to public conveniences constructed with private capital must be essentially different.

A railroad company, in building its line, avails itself of the right of eminent domain, which right is given for the public welfare, but it must pay for everything it acquires through the exercise of that right and it must, in actual practice, pay more than the property used is worth. Any railroad company will pay very much more than the value of property it desires to use rather than resort to condemnation proceedings. It seems an unwarranted attitude for the State to claim that it has given anything to the railroad company, or that the railroad company is indebted to the public or any individual on account of property acquired and for which it has paid the owner's price or, in case of a disagreement, full compensation as determined by his neighbors and as fixed by the law of the land. The equity of the latter settlement is so well understood and so fully recognized by State and Federal Government that the title secured in either way is held to be equally valid. It is neither reasonable nor honest to set up the claim that in some way the railroad company owes somebody, or everybody, for property it has lawfully obtained and fully paid for.

It is not now and never has been possible at any time to find one member of any legislative body willing to admit that he voted for a law giving the right of eminent domain to railroad companies for the benefit of the railroads. He would be mistaken if he did make such an admission.

If the right of eminent domain should be withdrawn from the railroad companies it would greatly enhance the value of railroad securities and very greatly retard the progress and development of the country and its people.

The State authorizes the building of a railroad and the exercise of the right of eminent domain when essential to the proposed construction. The law provides for compensation where damage is claimed by property owners and settlements are made in accordance with the law, either by agreement or as determined by judicial proceedings. There are instances other than where the right of eminent domain is exercised, when the property of one citizen is damaged by the action of another, and there are other instances where one party insures the property of another against damage, and in these instances, where the interested parties disagree, the amount of damage is appraised and fixed by a tribunal legally established, as in condemnation proceedings for highway purposes. I believe that in these instances the injured party having been paid the sum fixed by the court of appraisement, has no further claim against the citizen or company held to be liable and that neither he nor his neighbors, nor the State can assume, by reason of this occurrence, any jurisdiction over the business or revenue of the party who pays the damages.

When a railroad company condemns the property of a citizen it not only exercises a right enacted wholly for the public good, but it will be conceded that the public does, as is intended, benefit by the exercise of this privilege. The party whose property is taken is fully compensated through the protection he is properly afforded by the operation of the law; but if after the transaction is completed the railroad company can be further indebted to any one for the property which it has legally acquired, it is impossible that the additional obligation should be to any other person than the one whose property is taken or damaged. The public never had any interest in the property and can not acquire nor honorably claim any interest by reason of any lawful transaction between its owner and the railroad company.

Almost every citizen appears to believe that railroad companies owe the Government something on account of land grants, yet it seems technically and actually true that no railroad company ever received a grant of land, either from the State or Federal Government, in the sense that is generally understood and accepted. The Governments have at different times made bargains with certain syndicates or corporations, upon the fulfillment of stipulated conditions, to turn over to certain railroad companies specified tracts of land. The obligation of the railroad company having been fulfilled, the Government has carried out its part of the agreement. By making these trades the States has rapidly added to its wealth and population; so it may be said that the Government has not only been a trader in this matter, but a good trader.

You have doubtless noticed at different times that men arguing in favor of Government control of railroad earnings because of public-land grants have admitted some confusion of mind because of the circumstance that only a portion of the railroads have had land grants. An understanding of the fact that the State has never presented as a gift any lands to any railroad company eliminates all cause for such confusion while considering this question.

The Government can not only demonstrate readily that it has made very excellent bargains with the railroad companies, but it can further show that it has never delivered to any railroad company a single particle of land that has not been paid for by the railroad company through the complete fulfillment of its obligations as set forth in its contract with the State.

I doubt if any citizen who gives the subject sufficient thought or study to know and appreciate the truth will ever claim that the railroad companies are indebted to the State because of the transfer, for an agreed consideration, of these public lands. The average citizen has too much dignity and honor to look with patience or favor upon a person who having exchanged or sold an article to another should go about thereafter saying that he had given it, and I am sure that everyone wants and expects to see the Government display as much of honor and dignity in its business transactions as they would require of an individual member of society.

It is a well-known fact that the railroads in this country give the best and cheapest transportation in the world, and at the same time pay very much higher wages to their employees than railroad employees receive elsewhere. Here is an inconsistency that has been generally explained as one of the miracles performed by American genius. American genius can accomplish much, but not miracles, and we must find some other explanation of this condition if we are to have the truth. It is true that American railroads accomplish these results, pay their employees, pay a very large proportion of the public taxes, pay their interest charges, and pay some dividends on stock. Is this the result of a miracle, or is it because American railroads are undercapitalized?

We have fallen into an unwarranted habit of assuming that a man who invests his money in the building of a railroad thereby gives up the right of gain enjoyed by everyone investing money in other enterprises. It seems strange that this should be so, because of the fundamental idea that all people should have equal rights and consideration before the law, and again, because it would seem that if any exceptions are to be made derogatory to the individual they should not be made against the man who is the pioneer of development and whose investments in the first place have more to do with the growth and progress of the country than those of any other class.

As an illustration of the extent to which railroads are undercapitalized we may consider investments, we will say, in the Northwest. Upon a date not very remote certain parties decided to build a railroad from the Mississippi River, through the territory of Minnesota and into that of Dakota, and they themselves, and others having confidence in the country's future, invested their money in that enterprise. At the same time other parties believed it would be found profitable to invest their money in lands adjacent to this railroad through Minnesota and Dakota. All of these parties acted on their judgment and invested accordingly. The land tributary to the road was worth at that time an average of $5 per acre, although the value would have been much less except for the possibility of railroad transportation. It is now worth, country, towns, and cities, an average of $100 per acre, and yields a return, speaking conservatively, of 6 per cent on that valuation, or 120 per cent per annum on the amount of the original investment. Twenty-five years later it will probably yield 200 per cent per annum on the original investment. We all know this and we are glad that it is so. It is an evidence of the wealth and greatness of the country and the opportunities had by its citizens for investment and increase in which we may properly take great pride and pleasure.

Money has been expended in improving the land and the railroad, probably about the same percentage of value in each case, as both have been intelligently and well cared for by the addition of improvements that could add to their value and utility. The greater proportion of the lands and of the securities of the railroad company have changed hands many times since the first transaction here related. Men have speculated in either or in both, some times at a profit and again at a loss. As a result of these speculations some have grown poor and others rich, but the value of the property is apart from these incidents happily, and the land yields 120 per cent yearly on the amount originally invested, while the railroad investment is very much less remunerative.

Must we not concede that the man who put his money in the railroad property in this territory at the same time has the like right to benefit by its prosperity and increase which his work and investment did more than all other things to promote? His enterprise was of much greater importance to the public and the country than that of the other parties and his investment had a much greater element of risk. Under general business rules, if the territory grew and prospered, his percentage of increase should be greater than that of any other class of investor, but let us at least admit that he must be allowed a percentage of advance equal to that of his more conservative neighbors.

The per cent of increase in values after the construction of railroads has varied in different sections of the country, but the example cited is in a general way typical.

We have the cheapest and the best railroad transportation in the world, and we *pay our employees* more money than is received by railroad employees elsewhere, *because the builders* of American railroads have either waived or have been denied

their rights to share in the general prosperity of the country and in the increased values that have benefited every other class of investors who were wise enough and had courage enough to create or produce a thing required for public comfort and convenience.

It is not possible that rates will be materially changed in the direction of advances, but if they had never fallen lower than 300 per cent of the present basis the railroads would still be the greatest and most important economy enjoyed by the American people. If they were five times the present figures the railroads would still be indispensable.

The general public misapprehension on the subject of railroad capitalization is, I think, occasioned to a great extent by the large number of very wealthy men who invest in railroad securities. Many great fortunes have been accumulated in the United States through speculations in railroad and other securities, through speculations in real estate, through speculations in merchandise, and through the successful prosecution of great manufacturing or trading enterprises, and the possessors of these fortunes have, to a considerale extent, invested their surplus gains in railroad securities. This probably gives rise to the carelessly formed opinion that the fortunes of these men have been accumulated from the profits of transportation.

It is not possible to point to one citizen who has accumulated even a moderate fortune as a result of the income received from railroad securities.

American investors in railroad securities are of two classes; the very rich who place their money in this way for handling by others and the less fortunate who invest their savings or small inheritance in the same way because either their age or sex prevents their entrance into active business pursuits that offer larger rewards.

Of those who claim that railroad rates are too high and railroad earnings excessive, not one can be induced to invest in railroad stocks and bonds, nor in the securities of other enterprises promising such meager returns.

Men of strength and ambitious of fortune know of better fields than this to till; of opportunities ready to the hand of every energetic citizen of the Republic to increase his capital many-fold.

Investments in railroads should be allowed to increase in value in proportion to the growth of other property in the same territory, and a schedule of rates can not be unreasonably high unless it yields revenue in excess of an amount necessary to give fair returns on this valuation.

Government control of railroad earnings should be limited to the protection of citizens against extortionate rates and discriminations.

The people of the United States enjoy the best and cheapest transportation in the world, and in fairness there can not be, and in fact there is little, if any, complaint that the rates are too high for the service performed. Shippers requesting reductions in rates ask for the change in order that they may be placed in a more favorable position for reaching certain specified territory as against the competition of another market or a competitive commodity. The only reason for dissatisfaction and the only basis for complaint is that established rates are unduly favorable to other markets or commodities (always other markets and commodities), or that there is a discrimination of rates in favor of individual shippers.

The first class of complaints is born generally of a desire for an adjustment that will add to the advantages of the complainant in his efforts to enlarge or extend his trade in territories served by competing markets or commodities. A petitioner usually admits that his purpose will be served if the rates charged his competitor can be advanced, but in practice the readjustment, when made, is reached through reduction in rates and a sacrifice of the carrier's revenue. There is, in fact, very little of this class of discrimination, because the carriers undertake to protect and promote the business of everyone they serve, and the requests from those interested in different markets and commodities are so considered together that rates are adjusted in a way that is fair to all. Understandingly considered, one of the strongest evidences of the soundness of the general rate adjustment is in the dissatisfaction of various markets caused by their inability to get a basis of rates that will permit them to eliminate competition. Because readjustments are almost uniformly reached through reductions in rates the carriers do not receive compensation in proportion to the service performed.

Discriminations in favor of individual shippers are also at the expense of the carriers. For this reason, and for the more important reason that they are against the best public policy and in violation of the common law, it is of the very first importance that they should be discontinued.

There seems to be a popular opinion that railroads favor rate discriminations and are opposed to legislation that will prevent them. Nothing could be more erroneous than this view. Railroad managers have expended more time and thought in efforts to prevent and discontinue rate discriminations than in any other field of railroad

management and their efforts have been very sincere and very earnest and oftentimes ineffectual.

The failure of their efforts has been partially due to the attitude of the shipping public, which as a whole condemns discrimination and individually undertakes to procure discriminative and unlawful rates. Almost every important shipper employs capable and busy men whose duty it is to procure special advantages in the way of rates applicable to the business of the employer and the esteem in which these men are held is dependent, as in other lines of work, upon the measure of success achieved.

However, the greatest difficulty encountered by railroad managers is unwise legislation that has not only defeated the purpose for which it was proposed, but has had other unexpected and lamentable results.

I have been for many years greatly interested in this subject and in a good position for observation, and it is my belief that the interstate-commerce act, with its antipooling clause, has done more to foster and build up, by discriminative rates, the enterprises which are generally known as trusts than any other one thing. The application of the Sherman antitrust law, which was probably not intended to refer to rate adjustments by railroads, has very ably and considerably assisted the interstate-commerce act in the accomplishment of this undesirable result, since it added to the difficulties of railroad managers in their efforts to prevent rate discriminations.

The insurmountable obstacles presented by these two laws to understandings and agreements essential to rate maintenance, combined with the necessity for such rate maintenance, gave impetus to the movement for railway mergers and consolidations.

The antipooling clause of the interstate commerce act and the application of the Sherman antitrust law to rate agreements were together a clear notice to railroad owners that if they desired to comply with the common law prohibiting rate discriminations and with its reiteration by the interstate-commerce act they had open to them but one effectual method and that was through consolidation.

Railroad mergers are not so dangerous to the public welfare as the great industrial combinations, because of the common law regulation of rates, which law does not control industrial monopolies and the price at which their product shall be sold; but both classes of combinations excite the apprehension and opposition of the public and it is unfortunate that the people's representatives should have enacted laws to promote the conditions that are the subject of so much complaint and uneasiness.

The best aid as yet discovered to efforts for the maintenance of rates and the application of the same rates to the business of all parties is the exercise of the pooling privilege. The interstate commerce act prohibits discriminative rates in one section and in another denies the right to use the only remedy that had ever been found really effective against the evil. Such legislative error can only be accounted for on the theory that the law was enacted without proper consideration, without correct information, and without full knowledge of the peculiar and intricate character of the subject.

Every citizen who understands the situation and is sincerely concerned in the public welfare should oppose further railroad legislation, except that which has been very carefully considered and passed upon by men who understand from experience and observation what is likely to follow as a result of laws that are proposed for enactment.

For many years the railroad companies have maintained organizations known as traffic associations for the purpose of fairly and equitably adjusting the rates as between markets and commodities and adopting such means as they found most effectual for the maintenance and uniform application of those rates. They were greatly assisted in this latter work by the privilege of pooling until the passage of the interstate-commerce act. That law seemed to have almost the immediate effect of placing the rates in the hands of a few of the larger shippers who were in position to financially embarrass certain of the railroad lines unless they were willing to disregard the law and enter into private arrangements for rebating. These understandings were especially pernicious and of far-reaching effect, because they were made with only a limited number of people, in order to minimize the chances of detection and naturally with those controlling the largest amount of business.

After a discouraging experience with the problem of rate maintenance under these conditions the provisions with regard to pooling were to some extent evaded, it might be said, in deference to that feature of the interstate-commerce law and the common law prohibiting rate discriminations. Some of the most dictatorial rate demoralizers among shippers were curbed and put out of authority by quiet physical divisions of the traffic between the various interested carriers. This situation was difficult and unsatisfactory to the railroads, but it was an improvement over the conditions apparently fixed by the interstate-commerce law.

Then came what is known as the trans-Missouri decision, under the Sherman anti-trust act, its effect being to disrupt or destroy the usefulness of the traffic associations maintained by the railroad companies, because that decision practically held that it was unlawful to assemble for the purpose of discussing or putting into effect by agreement regulations having for their purpose a compliance with the law that requires fair and reasonable rates and prohibits discrimination as between shippers. Since that time railroad managers have been unable to think of any way in which they could afford to the public fair, reasonable, equitable, and uniform rates, except through consolidations.

Various members of the Interstate Commerce Commission have at different times admitted that the antipooling clause was a great stumbling block in the way of uniform rates, and I assume that this provision might have been repealed some years ago but for the reason that some members of the Commission have desired to make this admitted improvement in the law dependent upon the granting of the rate-making power to their body.

When the interstate-commerce law became effective I was railroading in the South. The honor of inserting the antipooling clause in the interstate commerce act was claimed by Senator Reagan, of Texas, and that distinction was accorded to him by the people of the Southern States. After the enactment of the interstate-commerce law Senator Reagan was so impressed with his unusual capacity for railroad regulation that he quitted the Senate to become chairman of the first railroad commission in the State of Texas, and because he was honest and unusually intelligent and painstaking he made as good a chairman as has presided over that body. Owing to his activity he started in to make a good many mistakes in the first year of his administration. He undertook at once to readjust all of the important rate schedules in the State and was astonished when shippers went to the capital to protest against some of his proposed schedules and to ask for the retention of those established by the railroads. He was again surprised when the Federal court granted the petition of a railroad security holder for an injunction restraining the carriers from making effective the commissioners' tariffs. Presently he grew in wisdom and was big enough and broad enough and honest enough to hear what the public had to say and what the railroad representatives had to present and to revise his ideas of rate making with the acquirement of real information. After enough experience to gain some actual knowledge of the transportation problem he had the courage to state openly, in writing as well as verbally, that the antipooling clause was a mistake in legislative acts for the government of carriers and that the pooling privilege was necessary to obtain the desired results. When we consider the experience Senator Reagan had to acquire before he reached a valuable conclusion on this subject it is not strange that members of Congress have been in need of additional light.

I do not mean to convey the idea that to legalize pooling will immediately stop rate cutting, because if we had the privilege it would be a difficult task to form the pools and agree upon divisions of business under them. The privilege of pooling would enable the railroads, within a reasonable time, to discontinue many of the worst abuses from which t e public suffers, by shutting off special arrangements with the heavier shippers, which would materially and directly tend to the steadying of the whole rate situation. This general steadying of rates would follow for the reason that when a great shipping company throws its entire business over one line, because of discriminative arrangements which it has been able to perfect, competing lines seek other traffic to take the place of that which has been lost and this results in further and finally in general demoralization. While I think this reasoning is logical I want to state, for your information, that my conclusion is the result of actual experience and observation.

Only a minor percentage of the total business of the country would be covered by pooling arrangements in any event, because the operation of a pool is attended with much labor and some expense to the railroads and if the privilege of pooling were restored it would only be availed of so far as might be necessary to insure uniform application of the tariff rates. The privilege of pooling is of no value to carriers except for the prevention of rate discriminations and demoralizations.

From the view point of a citizen I believe the proposition to give the rate-making power to the Interstate Commerce Commission is the most vicious piece of legislation that has been suggested in recent years. As a railroad man I know that the Commissioners' efforts would necessarily result in mistakes, against which the public should be protected. That these mistakes would be directly expensive to the railroads is likely; that the carriers would indirectly suffer through the injustice to shippers and the upsetting of business conditions is inevitable, because the interests of the railroads and the public, properly considered, are identical.

It is not necessary to take a railroad view in order to condemn the proposition to pass the rate-making power into the hands of men who are insufficiently prepared

for the work. I think it will be conceded that transportation in the United States is the greatest of all business problems. Many capable men have spent the better part of their lives in its study, and it would probably be impossible to select from their number six men who could properly do the work which the Commissioners desire to take upon themselves. The desire itself is born of a lack of knowledge so notable as to demonstrate the Commission's peculiar unfitness for the task.

It is not likely that rates in this country will ever show any material advance over the present figures. This would be true even if there was no restraint upon the railroad companies in making their rate adjustments, not even that of the common law. There would be changes in rates; some would be in the direction of advances and some in the way of reductions, and changes in both directions would be based upon fairly intelligent consideration of conditions well understood. In truth men do not make rates and men should not make rates. Every proper rate adjustment is born of conditions. The closest students of conditions are the men in charge of traffic on the various railroads in different sections of the country. The rates which they publish are a result of this study of conditions and are the expression of what those conditions are found to be and to require.

The power of rate making is not safe in the hands of any man or any body of men not in daily and hourly touch with the actual flow of business and with a full knowledge resulting from actual observation of what is necessary to protect and to stimulate the interests of every producer and trader.

No class of men have so great a fund of information about business and manufacturing of every kind, in every community and section, as that possessed by the traffic managers of American railroads. The public and every industry in the country benefits constantly from this unusual knowledge of its needs, and it should continue to do so. When there is a conference of these men through the medium of traffic associations or otherwise, there is at hand an amount and variety of information covering almost in detail every business enterprise in the country and the rate adjustments made represent the application of such intelligence as there is in the body to the full information at its command. We need not wonder, therefore, that rates based upon so complete a knowledge of conditions are seldom complained of by those who understand them and are really interested in their effect. If anyone stops to consider the number of tariffs in existence, it is remarkable that so little fault should be found with them by the people served. Complaints are rare and receive prompt consideration, and where there are no amendments a correct analysis of these complaints will generally discover that they are made by shippers desiring to obtain an unfair advantage of competitors in another market or over a commodity that is in competition with their own product.

We have only to go back a few years to find the average freight rate in the United States double what it is to-day, and almost all of this reduction has been voluntary on the part of the carriers, in deference to conditions which, as previously stated, are and should continue to be the controlling factor in the making of rates.

We may reasonably doubt the possibility of getting on the Interstate Commerce Commission men of greater intelligence than those engaged in railroad work and we can not hope to get a percentage of wisdom so much greater as to compensate for the lack of knowledge as compared with that which comes from being in daily and hourly touch with the actual business of the country and its movement. So long as the rate-making power remains with the railroads, every community, every commodity, and every person is accurately and intelligently represented in conferences that determine the public's business requirements.

It would be unwise to substitute for this arrangement one that would place the rate-making power in unpracticed hands, with men who perhaps have local prejudices that can not be properly counterbalanced, and possibly ambitions beyond or apart from the dealing out of precise justice to this or that community, or to this or that commodity.

It may be inquired why it is that so many commercial bodies and so many railroad men favor giving the rate-making power to the Interstate Commerce Commission. Possibly it might be a sufficient answer, of the Yankee order, to inquire in turn why so many people wanted the interstate-commerce law in its original form, but the question is entitled to some other response. So far as I can ascertain, the railroad men who favor this proposition are influenced by a feeling that it is impossible to get the legislation that should be had unless they make a trade with the Commission. They know that it is a vicious movement to give the Commission rate-making power, but they believe that body will not be willing to afford the relief which the public and the carriers require with regard to rate maintenance, unless they can get something in the way of personal and official aggrandizement. I have never agreed with this view and am still of the opinion that we may hope for intelligent legislation, and that it is a mistake to knowingly compromise with so serious an evil.

As for the public expression, it sometimes happens that noise and opinion are not precisely in accord, and then again, there is a good deal of opinion that is not the product of careful thought. To illustrate: The chairman of the transportation committee of one of the most important commercial organizations in the country told me that after having a call from a man who is cooperating with others to secure rate-making power for the Commission, his committee had recommended a resolution approving what is known as the Cooper bill. This man is possessed of unusual ability, has varied business interests, and has made a marked success of every one. I asked him why they thought well of the proposed legislation. He said they realized there was some danger in giving the Commission rate-making power, but they approved it in order that through the exercise of that power they might put an end to rate discriminations. I then asked him what the establishment of rates had to do with their maintenance. After a brief consideration he said that it had nothing to do with it, but that he had always thought it had until forced to do a little thinking through this simple inquiry. He is one of the directors of the organization, and when the recommendation came before that body he made some suggestions that resulted in a little thinking there and the action was not approved; and so it is that the Cooper bill failed of indorsement by that body.

It seems curious that men of such capacity, and so greatly interested in freight rates, should not understand, without having their attention called to it, that there is positively no relation between the establishment of a rate and its maintenance, but when you see that men of this caliber have not thought upon the subject enough to reach a right conclusion, it is not surprising to know that the public generally has been misled.

Some of those who have interested themselves in the movement to get rate-making power for the Commission have handled the campaign very effectively. They have met every cry of unrest from the public on account of rate discriminations with the response that the Commission is anxious to improve these conditions, but can do so only when they are granted the power of making rates. Whether these advocates know so little as to believe this, or whether they are deliberately undertaking to mislead the people, is a thing for them to answer.

I believe it is conservative to say that more than 95 per cent of the people who have an opinion on the subject believe that rate making and rate maintenance are practically the same thing.

If the Commission's power to make rates began to-morrow the present tariffs of the railroad companies would be made the tariffs of the Commission, and other rates the Commission might substitute from time to time could be deviated from with the same facility as those now in effect. Special and discriminative arrangements with favored shippers would continue, because nothing had been done, or even attempted, to disturb conditions in that respect.

The Commission could not use the rate-making power as a lever to bring about rate maintenance unless they used it as a club and undertook to punish the railroad which they believed to be guilty by a reduction in their rates. What effect this would have upon the railroad attacked is problematical, as its traffic might be sufficiently increased to compensate for lower rates. It would prostrate the revenue of all competing properties, and it would destroy all business interests in competition with those on the line under punishmeut, either as to markets or commodities. Unless it is expected that the Commission will pursue this impossible course, it can not be claimed that the power to make rates will affect their efficiency in bringing about their maintenance.

We are forced to the conclusion, therefore, that any legislation on the theory that to give the rate-making power to the Commission is to affect the question of rate maintenance will be legislation based upon pure error.

In the application of railroad rates in the United States there is one great evil that should be corrected, and that is the evil of rate discrimination in favor of particular shippers or combinations. Consciously or unconsciously those who are endeavoring to turn legislation in the direction of rate-making power for the Commission, ignore the real vital question and become the efficient agents of those who profit through the inequalities that are the only cause for complaint.

The interstate-commerce law, as originally enacted, had in it a penal clause that provided for the imprisonment of employees who contracted for rates at variance with the published tariffs, and it was found difficult to successfully prosecute offenders. The provision was offensive to American sense of justice and decency. There was a noble prejudice against the punishment of children for the sins of their parents. It was impossible to find jurors who believed that a subordinate acting under instructions should suffer imprisonment for an offense by which he did not profit, while the really interested parties were allowed to escape prosecution and punishment.

After the passage of the Elkins law there was a very great improvement in the rate situation, because shippers as well as railroad men were of the opinion that convictions could readily be obtained under that law, as it placed the penalties upon the parties actually profiting through rate discriminations. This better condition has not steadily continued, because the belief has gradually grown among shippers and others concerned that there is to be no serious effort to bring about the maintenance of rates under the provisions of the Elkins law.

My experience and observation warrant the conclusion that the common-law prohibition of unjust, unreasonable, and discriminative rates, in connection with competion of markets and commodities, would insure to the public just and reasonable rates, and that the repeal of the interstate-commerce act and amendment of the Sherman antitrust act, so that it would not interfere with consultations and agreements to that end, would bring about the maintenance of rates and their uniform application to the business of all shippers.

I realize, however, that there is an amount of misunderstanding, misapprehension, and prejudice that makes such legislation improbable, and that there is a strong sentiment demanding that some Government tribunal other than the existing courts shall at least have special and particular jurisdiction over the question of final rate adjustments if pooling is allowed. I believe that departure from the common law, which is broad enough to insure the rights of every citizen, and the enactment of special or class laws that deprive some interests of the protection their property would receive under the common law is mischievous and directly harmful to everyone in legitimate business, as in the case of previous so-called railroad legislation; but if there must be an additional tribunal I think its members should be appointed for life, and that it should be made up of able lawyers and experienced railroad men. The carriers should be the makers of rates, and this court should hear and decide the merit of complaints, allowing interested parties or communities to intervene and be heard. If rates are made by any carrier giving undue advantage to any market or community, it should be the duty of this court, upon so determining, on complaint of any shipper or carrier, to require that such rates be advanced or restored. Public anxiety as to the effects of pooling should be removed by a provision that carriers can not advance a rate on business covered by pooling arrangements except with the consent of this court.

I am of the opinion not only that a large proportion of this court should be trained traffic men, but further, that all of its members should, on every opportunity attend traffic association meetings, to the end that they may continue in close touch with transportation affairs and with the public demands and needs in connection therewith.

The railroad companies should be given a free hand in their efforts to bring about uniform rates and should have the cooperation of the Government and of the Commission if it is reorganized, so that it will give attention to the duty of preventing discriminations.

It is dishonest, and therefore immoral, to allow the Commission to establish and make effective rates which the courts may afterwards hold to be unjust; it is the taking of property without due process of law, without regard to equity or justice.

We have lately heard much of political creeds that threaten established rights of those who have, through labor and self-denial or otherwise, lawfully accumulated property, great or small. There are men who urge that these accumulations shall be shared equally by those who have created and saved with those who have remained idle or wasted their gains, but I do not think the wildest of these propagandas contemplate placing the owner of property at a special disadvantage in such redistribution.

We are not ready for legislation that will give those without the interest of invested labor or capital jurisdiction of the property of others, and that to the extent of saying that the rights of the lawful owners shall be the last to be considered.

The common law should protect, and does protect, every citizen against abuse, and we can not have regulations that will permit one who thinks himself abused to take the property of another, leaving the owner the poor privilege of regaining it by expensive litigation, if he can. We should have property titles conveying something better than the right to fight for partial recovery of our own.

I am sure that the public does not seriously desire a dishonorable administration of its affairs, and that the plea for rate-making power in the hands of the Commission should be rejected on the score of common honesty, even if there were not other valid reasons.

Aside from the added cost of transportation to the public, the one great objection to the Government purchasing and operating the railroads is because of the probability that such ownership would result in the downfall of the Republic, but the evil

consequences of Government tyranny without responsibility, are even more inevitable.

A government can not honorably undertake to fix the revenue of its citizens and their enterprises without obligating itself for their liabilities. So important a principle is involved here that no good citizen should find it difficult to cease, during its consideration, to be either a railroad or an antirailroad man.

The carriers have survived some injustice, and they may be able to survive still more, but no government is strong enough to escape penalty for dishonorable conduct in dealing with its citizens.

"What will you have? Quoth God. Pay for it and take it." The Government, the people, and the individual are alike subject to the inexorable law of compensation.

I would not urge delay in legislation for the sake of delay; the railroads are quite as much in need of additional legislation as is the public, but unless Congress is in position to recognize fundamental truths, and act simply and candidly by repealing legislation that has been found to be abortive and injurious to all interests, then there should be no legislation whatever until so much time is taken as may be necessary to frame laws that will effectually provide the best way to eliminate the present discriminations and inequalities, and insure justice to all parties. It is not important that these new laws shall be in accord with the views of those urging the power of rate making for the Interstate Commerce Commission, nor with the desire of some of the railroad officials and financiers interested in railroad properties, but they must be honest and equitable.

There is a clamor about this legislation from all sides, and everyone wants peace, but it must be the "peace of justice."

I not only believe that practical railroad men should be asked to assist in the framing of new laws on the subject of transportation, but think that after an understanding is reached as to what those laws should be, the committee in charge should seek criticism from all sides, not only in the form of speeches before the committee, but in a quiet informal discussion of measures proposed with those well informed but not equipped for making speeches. The final draft of the act should be submitted to expert traffic men for opinion as to its actual practical meaning and effect.

Legislation to govern transportation rates should cover water transportation so far as the former is properly subject to Government control. The river boat lines, after the interstate-commerce law was enacted, proceeded to make demands on the railroads even more promptly than the large shippers, and, I assume, continue to do so, although I have not in recent years been in a territory where river transportation is a factor in the local situation. The Government provides and maintains the roadway and right of way for boats, competing with roads built and maintained with the private capital of its citizens, and permits them to be guilty of any amount of discrimination and extortion which they may desire to practice. After the interstate-commerce act became a law many of these river-boat owners went to the railroad companies and pointed out that they had an advantage which they intended to avail themselves of, unless they were paid not to disturb the revenue of the railroad companies. I do not know why these transportation companies are excepted from Government supervision, but it appears that there is much more reason why the Government should exercise jurisdiction over the making of their rates than over the business of carriers that construct and maintain their own properties.

Whatever legislation we may have in the near future, the burden of serving and satisfying the public with transportation will remain with the railroads, and the owners of railroads will continue to have more direct interest than any others in what may build up the wealth and promote the progress of the country, on account of the magnitude of their investments, returns upon which are determined by the measure of general prosperity. It is to be hoped that our lawmakers will remember this, and also that the question they have under consideration is a very practical one, and that it must be considered in a common sense, matter-of-fact way, and not with relation to any clamor, because such clamor may be ill directed and may not even represent so much as the difference in the numerical strength of the people who own railroads and the people who do not.

No other class of citizens is so deeply concerned in the problem of eliminating discriminative rates as the owners of the railroads, who supply all the money involved in the operation of this pernicious practice, and suffer with all other citizens from everything detrimental to the real business interests of the country. It should be evident to our representatives also that no one does or can understand the situation and its difficulties so well as the railway officials. What they have to say on the subject, like that which may be said by others, is entitled no more consideration finally than its wisdom merits, but every sincere and thoughtful person will desire to hear from men of experience, and particularly from those especially concerned in the elimination of the abuses which our legislators want to see discontinued.

With a little plain, unprejudiced thought every intelligent man can see that the railroad owners and operator's anxiety to discontinue rate discriminations does and must far surpass that of any other person or class of persons, and the use of plain common sense will suggest that the Government should cooperate with these people in the elimination of the evil under treatment. Even those who believe in what is called restrictive railroad legislation should be sufficiently calm and thoughtful to know that there ought not to be anything to restrict the railroad companies in their offert to obey the common law and to provide the public with uniform as well as reasonable rates. If members of Congress will bear in mind these simple and self-evident truths, all the people, including every class, will profit by their action.

If we have legislation that is not based upon existing conditions, and our requirements well understood, then we must expect every business interest, including railroads, to suffer further loss, inconvenience, and injustice.

I realize that some of my suggestions as to legislation may at once appear deficient to you because of my lack of legal knowledge, but free and informal discussion should develop legal difficulties, when perhaps other suggestions can be made that will fit the legal requirements and at the same time accomplish correct results. In any event, the principles of right and justice to all ought to be kept closely enough in mind to prevent unjust and unwise legislation.

I believe this is the longest letter I have ever written, and at the same time it is so brief as compared with the magnitude and importance of its subject that it is very incomplete and I am afraid it will not be of very much use to you.

Yours, truly, L. F. DAY.

Mr. George B. Robbins, president of the Armour Car Lines Company, and A. R. Urion, esq., attorney of the Armour Car Lines Company, in their testimony stated that they would file with the committee supplementary statements containing the additional facts, and especially statistics requested by the committee in its hearings. These statements have not been received at the date of printing the testimony.

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